

OFFICIAL GAZETTE



GOVERNMENT OF GOA

EXTRAORDINARY

GOVERNMENT OF GOA

Department of Labour

Order

28/87/94-LAB

The following Arbitration Award dated 13-10-97 passed by Justice Malvankar in respect of the dispute between M/s. Zuari Agro Chemicals Ltd. and their workmen represented by ZACL Workers' Union is hereby published under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 13th November, 1997.

AWARD

1. This is a reference in respect of the disputes between M/s. Zuari Agro Chemicals Ltd., Zuarinagar, Goa, and their Union known as Zuari Agro Chemicals Limited Workers Union, Zuarinagar, Goa. The arbitration agreement was entered into between the parties on 22nd June, 1994 in terms of sub-section (1) of section 10-A of the Industrial Disputes Act, 1947 (Central Act 14 of 1947). The agreement was published in pursuance of sub-section (3) of Section 10-A of the said Act in the Official Gazette of the Government of Goa, Series II No. 26 dated 29th September, 1994, at page 339.

2. The specific matters in dispute between the parties as per the agreement between them are as published in the Annexure to the said agreement between the parties.

Annexure

"Whether the demand of Zuari Agro Chemicals Limited Workers' Union for payment of the following allowances at par with other employees who are paid the same, is justified?

- (a) Factory allowances/site allowance (clause No. 2.10 of settlement dated 22-6-1994);

- (b) Towel and Soap allowance (clause No. 2.11 of settlement dated 22-6-1994);

- (c) Washing Allowance (clause No. 2.12 of settlement dated 22-6-1994);

- (d) Annual Performance Award (clause No. 5 Annexure 3, para 1.9 of settlement dated 22-6-1994).

If so, to what relief the workmen are entitled?"

3. Before I refer to the pleadings filed by the parties, it would be necessary to refer to the parties, particularly their status.

4. M/s. Zuari Agro-Chemicals Limited (hereinafter referred to as "the Company") is a fertilizer unit which has besides its manufacturing unit at Zuarinagar, India, its administrative and corporate head-quarters at the same location and 7 regional offices and 3 liaison offices in four States of the country. Though the factory and the corporate headquarters are both located at Zuarinagar they are two separate entities. The factory is a separate establishment with its clearly defined precincts surrounded by a boundary wall and registered under the Factories Act, 1948. The administrative office-cum-corporate headquarters, located at Zuarinagar is outside the factory's boundary wall and it houses various departments of the Company, viz., Accounts, Secretarial and Legal, Personnel and Administration, Purchase, Marketing and a part of Technical and Project Department. This Administrative Office of the Company which is situated outside the boundary wall of the factory, is registered under the Goa Shops & Establishment Act. The Company's 7 regional offices, 2 Agricultural Development Laboratories and 3 liaison offices in various States of the country, are also registered under the Shops and Establishments Act of the respective States.

5. As far as the Company's employees are concerned those in the Factory are represented by Zuari Agro Chemicals Limited Employees' Union, which is a majority Union, having a membership of 433, whereas the employees working at the Administrative Building as well as the Regional Offices are represented by Zuari Agro Chemicals Limited Workers' Union. This Union has only about 151 employees as its members. The ZACL Workers' Union is a splinter group which separated from the Employees Union in the year 1981. Both these Unions have been historically signing separate settlements covering revision of the service conditions of the employees who are their respective members.

6. Turning to the pleadings of the parties, we have the Statement of Claims filed by the Workers' Union (at Exhibit 4) and the Written Statement of the Company (at Exhibit 9). One Mr. T. A. Fernandes who claims to be a member of the Employees' Union has intervened in these proceedings in response to a public notice issued in these proceedings and has filed his Written Statement (at Exhibit 6). Last he also filed a Reply (at Exhibit 71) at the fag end of the proceedings.

7. Turning first to the Statement of Claims (at Exhibit 4), the Union has contended that the dispute is with respect to the discriminatory grant of allowances to one section of workmen, while denying the same to another section, or paying the same at low rates to other section. The allowances to which reference is made above, the Union says, that the issue of these allowances arose due to the historical differences between the working hours of technical workmen and Administrative workmen. The Union further says, that while the differences between the working hours of technical workmen and the administrative workmen which were ultimately removed, and uniform working hours were introduced in respect of all sections of workmen, the differentiation in allowances however, continued, resulting in a clear anomaly in so far as the administrative workmen are concerned. It is this anomaly and the perpetuation of discrimination which gave rise to the present dispute.

8. The two main establishments of the Employer at Zuarinagar, are the administrative building, which is also known as 'Jaikisaan Bhavan' and the factory. The factory and the administrative building, the Union contends, are vitally, componentally and functionally are integrated so as to form part of one establishment, within the meaning of industrial law. Prior to 16th June, 1984, all workmen assigned to work in the factory, were required to work 48 hours in a week, regardless of whether they were technical workmen or administrative workmen. The workmen in the administrative building by contrast, were required to work 40 hours per week during the same period. Under a settlement dated 16th June, 1984, signed by the Union herein, as also by the other Union, named Employees' Union, the working hours in the factory were reduced to 44 hours per week, while those in the administrative building remained 40 hours per week. Ultimately, by two separate settlements signed in the year 1991 by each of the said two Unions, the working hours in the factory were brought on par with those in the administrative building, and since then all sections of the workmen have been required to work for union working hours of 40 hours per week.

9. The Union alleges, that in so far as the workmen were concerned, since the year 1977, they were broadly grouped into two classes, viz., technical and administrative. By a settlement dated 25th June, 1977, all the administrative staff whether working in the administrative building or in the factory, were classified as 'A-Series', and were placed in salary/wage grades A-4 to A-9. The Production or Technical staff were classified as 'T-Series', and were placed in salary/wage grades, T-1 to T-7. The Union alleges, that placement in T-Series or A-Series, was not dependent upon the location at which the concerned employee was working, nor did it depend upon whether an employee worked for 48 hours or 40 hours. Thus, several administrative workmen who were then posted at the factory were classified in A-Series, even though they worked for 48 hours in a week. The Union states, that at that time several categories of administrative workmen were assigned to factory, including vehicle drivers, nursing assistance, product handling clerks/typists, stores clerks/typists, engineering clerks/typists, audio-visual van and equipment operator, stenographers, timekeepers, transport assistants, warehousing supervisors and estate maintenance assistance. Barring three stenographers and one driver, all the other A-Series workmen assigned to work in the factory were then working 48 hours per week, while all other A-Series workmen in the Administrative Building worked 40 hours per week.

10. The Union alleges, that subsequently finding that the classification of the workmen without having regard to the length of

their working hours was leading to administrative difficulties, the employers re-classified all workmen in 1981 on the basis of their working hours, irrespective of the place of work. This was done through two settlements signed with the two Unions in 1981. As a consequence, all workmen who worked for 48 hours per week, were reclassified and placed in "T-Series" salary/wage scales, while all workmen who worked for 40 hours per week were classified in 'A-Series'. Thus, a clear linkage was created between the schedule of working hours and the salary/wage scales of workmen, and the classification in 'A-Series' and 'T-Series' was separated from the erstwhile distinction between the administrative and technical workmen. In other words, there were several administrative workmen included in 'T-Series' only because they worked 48 hours per week.

11. Thereafter, in the month of March, 1984, six administrative workmen were transferred from the factory premises to the Administrative Building, with the condition that their working hours would remain 48 hours, and their classification would remain in 'T-Series'. The six administrative workmen concerned were, two stenographers, two draftsmen, an engineering clerk/typist and a civil overseer. Their salaries and allowances thus remained the same, and it was once again clear from the manner in which the concerned workmen were transferred, that the grades and allowances were clearly linked to the working hours.

12. Thereafter, pursuant to a settlement dated 16th June, 1984 signed by both the Unions, the working hours were reduced to a schedule of 44 hours per week in respect of all workmen who were formerly working for 48 hours a week. This was in partial acceptance of the Union's demand for reduction of working hours to 40 hours a week and uniformity of service conditions. In view of the fact that a disparity in working hours was still maintained in respect of 'T-Series' workmen (44 hours), and 'A-Series' workmen (40 hours), the employer, the Union alleges, granted an allowance of Rs. 25/- per month to all 'T-Series' workmen who were working for 44 hours. This allowance, which was granted specifically to compensate the workmen for the extra of work put in by them, was called "Factory Allowance." [underlining is mine]. In view of the fact that the settlement was made retrospectively applicable from 1st October, 1983 and thus the workmen had already worked for 48 hours a week between 1st October, 1983 and 16th June, 1984, a lumpsum payment of Rs. 300/- was made to the employees in 'T-Series' as compensation for the extra 4 hours per week worked during the said period. Most significantly, both the lumpsum payment as well as the "Factory Allowance" granted vide the settlement dated 16th June, 1984 were paid to all workmen working 44 hours per week (formerly 48 hours), irrespective of the work place and irrespective of whether they belonged to the administrative or technical categories. [underlining is mine]. Equally, significant is the fact that the said lumpsum payment and allowance were granted to all workmen on the 44 hours schedule, regardless of whether they were doing the same or substantially similar nature of work as their counter-parts in 'A-Series'. The aforesaid six workmen transferred to the Administrative Building in March, 1984, received these payments, whereas the four employees working 40 hours per week in the factory premises did not receive the same. Similarly, three new workmen who were recruited as Telephone/Telex Operators (shifts) and were posted in the Administrative Building, were also granted the Factory Allowance in view of the fact that they were required to work on a 44-hour schedule on par with 'T-Series' workmen. The Union therefore, contends that though described as a "Factory Allowance", the said allowance was not payable to all workmen in the factory on one hand and was payable to some workmen outside the factory on the other. The Union further contends, that it is also very important to note that subsequently, when some workmen were reclassified from 'T-Series' to 'A-Series' their working hours stood reduced from 44 hours to 40 hours per week. In all such cases, simultaneously with the reduction in working hours, the concerned workmen lost the benefit of 'Factory Allowance'. The Union therefore contends, that thus there was no manner of doubt

that the said allowance, though nominally designated as a "Factory Allowance", was in fact nothing but a compensation towards the extra four hours of work put in by workmen on the 44-hour schedule. [underlining is mine].

13. The said 'Factory Allowance', which was originally granted at the rate of Rs. 25/- per month in 1984, was subsequently revised and increased to Rs. 80/- per month, vide settlement dated 30th December, 1987. As in the past, the said allowance was granted only to those workmen who worked for 44 hours, irrespective of their place of work, while it was not granted to workmen who worked for 40 hours per week, irrespective of their place of work. [underlining is mine]. The Union further states that the workmen who worked 44 hours per week continued to be designated as "T-Series" workmen, while those who worked 40 hours per week were kept in the scales of 'A-Series', and this also was irrespective of the place of work, whether it was factory or the administrative building or any other place.

14. After the expiry of the said settlement, on 31st December, 1989, a fresh charter of demands was raised by the Union and negotiations began afresh on the demands, one of which was for reduction and uniformity of working hours. The Union demanded complete parity amongst all workmen as far as the working hours as well as allowances were concerned. The employer, after prolonged negotiations/discussions, conceded the demand for reduction in working hours of all those who were working 44 hours per week, so as to bring about average working of 40 hours a week. Thus, the disparity in working hours was completely done away with. Having agreed upon uniformity of working hours, the next issue which arose was payment of "Factory Allowance" to all workmen alike, as there was now no rationale for discriminating against those who worked 44 hours per week, since now every workmen would observe 40 hours per week alike. After prolonged discussions, and having expressly admitted that this allowance had been paid in the past only as compensation for working extra hours, the Management agreed to settle the charter of demands by paying the "Factory Allowance" to all workmen, in the following manner:—

- (i) All the clerical and other administrative staff who were working for 44 hours would continue to receive Rs.80/- per month only without enhancement as a "Special Allowance" in lieu of "Factory Allowance";
- (ii) All other staff who were already working on the 40 hours per week schedule, would receive Rs. 80/- per month as "Special Allowance";
- (iii) Technicians, Craftsmen and such other technical staff would receive "Factory Allowance" at an enhanced rate of Rs. 125/- per month.

15. It is alleged by the Union, that the aforesaid offer was accepted by the Union, and was accordingly agreed upon by both the parties. It was also incorporated in the draft of the settlement which was to be signed by the parties. The employer, handed over to the Union the draft prepared by them accordingly. However, surprisingly, the Union alleges, the employer thereafter had second thoughts in the matter before the settlement could be signed on the basis of the agreed draft. The Union was surprised to receive the employer's letter dated 31st January, 1991, whereby the employer submitted a fresh draft of a proposed settlement, which they insisted was to be treated as a final draft on which no further negotiation was possible. By the letter accompanying this draft, the employer gave the Union barely 11 days to accept the draft and threatened to withdraw all offers and enter negotiations de novo, if acceptance was not conveyed in writing by 11th February, 1991. The Union further alleges that in the new draft settlement conveyed with their letter dated 31st January, 1991, the Management made substantial changes as far as

the "factory Allowance" was concerned. The draft read, that effective from 1st January, 1990, the employees working in the Factory, Vasco Installation, Damsite and Projects and Technical Services, as well as Telephone/Telex Operators (shifts) would receive Rs. 130/- per month as "Factory Allowance/Site Allowance", whereas effective from 1st January, 1991, the employees in the factory currently working on 40 hours a week schedule, new entrants in the position of Stenographers, Clerks/typists and Clerks in the Works Office and Projects and Technical Services, Librarian and Telex/Telephones Operators (shifts), and all other employees would receive 'factory Allowance/Site Allowance' at the rate of Rs. 80/- per month. Since, the Union alleges, that this new offer was patently discriminatory, apart from being contrary to the assurances given to the Union by the employer, during the course of negotiations, the Union pointed out in its letter dated 4th February, 1991, that this proposal would result in payment of allowances at different rates to persons doing identical or substantially similar work. However, as the employer had threatened to withdraw the entire settlement offer in toto, if the Union did not sign on the dotted line within the short period of 11 days, and as the Union's attempts to get the matter settled through conciliation also bore no fruit within that short period, ultimately, the Union had no alternative but to sign the settlement for fear of complete withdrawal of the settlement offer, especially since the Management had also withdrawn some other benefits which were already agreed upon. However, while signing the settlement on 12th February, 1991, the Union made it clear that it would be open for the Union to approach the appropriate forum for redressal of their grievances if the Management did not consider their request for eliminating the aforesaid discrimination. Accordingly, being left with no choice in the matter, the settlement was signed on 12th February, 1991, exactly as per the draft given by the employer vide their letter dated 31st January, 1991, without making any changes. The Union contends, that in this manner, for the first time an invidious and unsustainable discrimination was introduced in the allowances payable to persons doing same or substantially similar work, which was not based on any rationale such as the length of working hours. Whereas earlier, the factory Allowance was at all times based upon the extra working hours put in by the concerned workmen, after 1991 for the first time differential rates of allowances were paid even though the workmen were all working for the same number of hours each week, namely 40 hours.

16. The Union further alleges, that in order to perpetuate the discrimination against the Union (i.e. Workers' Union), and the workmen represented by it, the employer while signing a subsequent settlement dated 26th March, 1991, with the Zuari Agro Chemicals Limited Employees' Union, sought to obfuscate the issues by merging 'Factory Allowance' with basic pay in certain cases. Thus, the abovementioned Factory Allowance was split into different heads in the settlement dated 26th March, 1991, and was designated as "Factory Allowance" and "Site Allowance" in most cases, while in certain cases an amount of Rs. 36/- was merged into the employee's basic salary with retrospective effect from 31st December, 1989 in lieu of the Factory Allowance which such employees were already receiving. The Union, therefore contends that this was nothing but the payment of the very same Allowance known as "Factory Allowance" to such workmen, except that it was now merged with and formed part of their basic pay. Under the said settlement, factory Allowance was payable at the rate of Rs. 50/- per month, and Site Allowance at the rate of Rs. 80/- per month, making a total of Rs. 130/- per month. According to the Union, the settlement dated 26th March, 1991 expressly acknowledged the link between these allowances and the working hours, and it was specifically provided that those employees who had been working on 44-hour schedule will be paid "Site Allowance" at the rate of Rs. 80/- per month, effective from 1st January, 1990, while all other would be paid Site Allowance at the same rate, but with effect from 1st January, 1991, instead of 1st January, 1990. This removed any last vestige of doubt about the rationale and basis of such allowances. According to the Union, the discrimination based on the erstwhile working hours was writ large on the entire exercise,

as is made clear by the example of six administrative employees doing identical work. Two stenographers, one clerk/typist and three telex/telephone operators posted in the Administrative Building, who were earlier working 44 hours per week received a combination of Rs. 80/- as Site Allowance and Rs. 36/- by way of merged basic pay or alternatively Rs. 130/- as factory/Site Allowance, while another telephone/telex operator doing identical work did not receive the said allowances merely because he was earlier working for 40 hours per week.

17. The Union further alleges that similar discrimination was also practised by the employer in respect of "Washing Allowance", which was also paid selectively only to certain sections of the workmen without any justifiable rationale or basis. When the Union submitted its aforesaid charter of demands in the year 1990, one of the demands raised was for payment of washing allowance on uniform basis to all. This was because some of the employees working in the Administrative Building, regional Offices and Factory premises were receiving this allowance at the rate of Rs. 35/- per month whereas others, though performing work of the same or similar nature were denied this payment, which amounted to discrimination. The employer, during the course of negotiations, orally acceded to the demand to pay Rs. 80/- per month as Washing Allowance to all workmen, and in addition to issue two sets of uniforms to those employees who would be provided with uniforms in terms of the new settlement. Later on, the employer changed the offer as follows:—

- (i) Washing allowance to be paid at the rate of Rs. 80/- per month to those employees who were already provided with uniforms and who were receiving Rs. 35/- per month as Washing Allowance earlier;
- and
- (ii) Washing allowance to be paid at the rate of Rs. 40/- per month to those employees who would be provided uniforms in terms of the new settlement.

18. The Union contends that this was equally discriminatory, and resulted in unjustifiable differentiation between identical categories of workmen performing same or similar nature of duties and whose work was the same. The Management was therefore, requested by the Union to adhere to the earlier offer of a uniform payment of Rs. 80/- per month to all. The Management did not agree and finally under their letter dated 31st January, 1991 served the aforesaid ultimatum to accept the altered draft settlement or face withdrawal of all offers if acceptance was not conveyed in writing by 11th February, 1991. The Union protested against the said letter dated 31st January, 1991 by their letter dated 4th February, 1991 and ultimately, the Union alleges that it was forced to put an end to the protracted negotiations by signing a settlement as per the draft submitted. The Union alleges, that however, it had made it clear that this was without prejudice to their right to approach the appropriate forum for redressal of this grievance also.

19. The Union further alleges that similar discrimination was also introduced by the employer for the first time when it signed a settlement dated 26th March, 1991 with the Zuari Agro Chemicals Limited Employees' Union, whereby "Towel and Soap Allowances" were granted with retrospective effect from 1st January, 1990. As this settlement was signed after the present Union had already entered into a settlement on 12th February, 1991, the members of the present Union were deprived of this benefit. Accordingly, none of the members of the present Union are receiving this allowance. This allowance is payable to the following categories who are the members of Zuari Agro Chemicals Limited Employees' Union only, and these categories are:—

- (a) Personnel Assistants/Time Keepers in Factory Premises;
- (b) Stores Assistants in Factory;
- (c) Material Handling Clerks Factory;

- (d) Supply and Distribution Assistants in Factory;
- (e) Estate maintenance Assistance in Factory;
- (f) Civil Overseers in Factory and Administrative Building;
- (g) Draftsmen in Factory and Administrative Building; and
- (h) Some others in Factory premises.

20. The Union contends that the action on the part of the Management in paying this allowance to Assistance in Factory, such as, Personnel Assistants, Stores Assistants, Estate Maintenance Assistants, Supply and Distribution Assistants and Material Handling Clerks, while simultaneously denying the said payment to other Clerks doing the same or similar nature of work in the Factory and Regional Offices and Administrative Building, as well as other Assistants in the Regional Offices and Administrative Building, such as Accounts Assistants, Supply and Distribution Assistants, Telex Operators, Stenos, Personnel Assistants, Laboratory Assistants, Despatch Clerks, Office Attendants etc., is patently discriminatory as the work done by the Assistants, Clerks, Stenos in the Factory premises and the Administrative Building/Regional Offices is the same as all other Assistants. Further, the Union alleges, that the work done by these various categories of Assistants has not undergone any change in 1991 or thereafter.

21. In the circumstances, the Union contends that it was constrained to file a Claim under the "Equal Remuneration Act, 1976" before the Assistant Labour Commissioner, Panjim, to seek removal of the aforesaid disparities. In the meanwhile, after terminating the settlement dated 12th February, 1991, a fresh charter of demands was raised by the Union, raising general demands on behalf of the workmen. One of the demands of the Union was for enhancement of Factory Allowance/Site Allowance so as to bring the same on par with the amounts paid to other employees covered by the settlement dated 26th March, 1991, and for payment at equal rates to all the employees. Other demands raised included the aforesaid "Washing Allowance" and "Towel and Soap Allowance" at par with the workmen covered by the settlement dated 26th March, 1991. However, the Union alleges, that the employer adopted the stand that unless the Union withdraws all judicial and quasi-judicial cases, including the one filed under ERA 1976, the Management would not commence discussions on the charter of demands. The Union informed the Management that unless the Management agrees to eliminate the existing discrimination in the current settlement with retrospective effect from 1st January, 1993, the Union would not withdraw the cases. Later on, the Management was informed by the Union, that it was agreeable to refer these issues to arbitration before a mutually acceptable Arbitrator. The Management was also requested to spell out their offers as far as the above allowances were concerned.

22. The offer of the Management on Factory Allowance/Site Allowance was as follows:—

- (a) Employees who received Rs. 130/- per month as Factory Allowance/Site Allowance as per earlier settlement would now receive Rs. 160/- per month as Site Allowance and Rs. 50/- per month as Factory Allowance (Total Rs. 210/- per month on both heads);
- (b) Employees who received Rs. 80/- per month as Factory Allowance/Site Allowance would now receive Rs. 160/- per month as Site Allowance and no Factory Allowance (Total Rs. 160/- per month only).

23. Since however the above offer was discriminatory, the Union demanded that either the Management should pay Rs. 210/- per month to all, as factory Allowance/Site Allowance, or alternatively Site Allowance

of Rs. 160/- per month to all, and Rs. 50/- per month as Factory Allowance to all (Total Rs. 210/- per month) on both heads splitted up separately as Factory Allowance and Site Allowance or Rs. 210/- per month on one head as factory Allowance/Site Allowance unsplitltd without changing the existing nomenclature.

24. The Management's offer on Washing Allowance was as follows:—

- (a) Rs. 120/- per month to those employees who received Rs. 80/- per month and Rs. 80/- per month to those employees who received Rs. 40/- per month as Washing Allowance.

Since the above offer also amounted to clear discrimination between identical categories, the Union demanded parity and payment of Rs. 120/- per month as Washing Allowance to all, effective from 1st January, 1993.

25. As the management did not agree, it was finally agreed that all other demands would be settled so as to bring about an end to the protracted negotiations, and that the disputed matters would be referred to the Arbitrator and accordingly the matter was referred to arbitration, as aforesaid.

26. Lastly, the Union in para. 24 of its Statement of Claims, has claimed the disputed allowances, as under:—

In so far as the Factory Allowance/Site Allowance is concerned, the Union prays that the following amounts be awarded:—

- (a) Rs. 210/- per month as Factory Allowance/Site Allowance inclusive of Rs. 130/- per month and Rs. 80/- per month, payable as per earlier settlement;
- or
- (b) Rs. 160/- per month as Site Allowance and Rs. 50/- per month as Factory Allowance inclusive of Rs. 130/- and Rs. 80/- payable under earlier settlements;
- or
- (c) Rs. 160/- per month as Site Allowance and adding of Rs. 47.61 in the basic salary and no Factory Allowance. The amount specified is inclusive of Rs. 130/- and Rs. 80/- payable in terms of earlier settlements.

27. In so far as the Washing Allowance is concerned, in para. 25 of the Statement of Claims, the Union prays that the following claims be awarded with retrospective effect from 1st January, 1993;

That all workmen be paid Washing Allowance at the rate of Rs. 120/- per month which is inclusive of Rs. 80/- per month and Rs. 40/- per month received in terms of earlier settlements.

28. Regarding Towel and Soap Allowance, the Union in para. 26 of the Statement of Claims prays that the said allowance be awarded to all members of Zuari Agro Chemicals Limited Workers Union with retrospective effect from 1st January, 1993 onwards at the rate of Rs. 30/- per month.

29. Regarding Special Performance Award Scheme in para. 27 of the Statement of Claims, the Union submits that it is in addition to the existing Annual Performance Award. The Union had not originally demanded this Scheme, but it was proposed by the Management. The proposal of the Management was to evolve a new Performance Award Scheme which provides for Additional Performance Award to Craftmen, Mobile Equipment Operators, Pump Operators, Technicians and Laboratory Assistants in Operations, Maintenance, Laboratory, Plant engineering Services, Civil Overseers and Draftsmen

in Projects and Technical Services. The Union do not agree to the proposal of the Management to pay this allowance to certain categories only, while denying it to the rest as every workmen makes an equal efforts to achieve production and progress for the Company.

30. The Union, therefore, prays for the aforesaid relief of all the allowances and Additional Performance Award, in dispute.

31. The Employers have filed their Written Statement, at Exhibit 9.

32. Regarding Factory/Site Allowance they contend that Factory Allowance is currently being paid to all employees working in the Factory, Vasco Installation at the rate of Rs. 50/- per month as per the terms of settlement dated 26th March, 1991 signed by the Company with the Employees' Union. This allowance is also payable to Draftmen, Civil Overseers; who though located in the Administrative Building are essentially on a job of technical nature, which requires their frequent presence in the factory premises. They allege that in fact these employees were earlier located in the Factory and later on shifted to the Administrative Building when the whole department was relocated in the Administrative Building. This allowance is not payable to employees in the Factory, who are employed in purely administrative type of jobs like stenographers, clerks in Works Office and librarian. According to them, this allowance is essentially a compensation to the employees who are exposed to a factory environment and its payment only to such employees cannot be construed as unjustified, unreasonable or discriminatory. The Employers further submit that payment of this allowance to Factory employees finds support in the prevailing practices in some of the other Fertilizer/Chemical Plants.

33. The contention of the Workers' Union that the payment of this allowance is discriminatory in nature, is misconceived and legally untenable and does not lie in the mouth of the Workers' Union to allege unfairness after they have accepted the entitlement of such payment to a restricted number of employees in successive settlements signed by them on 16th June, 1984, 30th December, 1987 and 12th February, 1991. As regards Site Allowance of Rs. 80/- which was being paid to all employees of the Company in terms of the settlements dated 12th February, 1991 and 26th March, 1991, the Management has offered to revise the same to Rs. 160/- per month, which was accepted by the Employees' Union. However, the Workers' Union has rejected this offer, the Employers, therefore, contend that this demand therefore, is unjustified.

34. Regarding, Washing Allowance, the Employers contend that this allowance is paid at the rate of Rs. 120/- per month to employees in the Factory and designated employees in the Administrative Building, like Draftsmen, Civil Overseers and Stenographers and Clerk Typists in the Projects and Technical Services Department, in terms of settlement dated 25th April, 1994 signed with the Employees' Union, and at the rate of Rs. 80/- to all other employees in the Administrative Building, and Stenographers, Clerk/Typists in the Work Office of the Factory. The demand of the Workers' Union is that Washing Allowance should be paid at uniform rate of Rs. 120/- since the payment at differential rates to various categories of employees is discriminatory in nature.

35. The provision of uniforms to Factory employees is need based and is a universal practice obtaining in most of the Factories in India. Merely, because the Management having conceded to the demand of Workers' Union, has provided uniforms to office employees it is not obligatory that there should be parity in the payment of the Washing Allowance. It is an irrefutable fact that uniforms of persons working in a factory environment and exposed to dust and other adverse conditions get soiled more frequently and consequently need washing more frequently. The payment of Washing Allowance at differential rates cannot be assailed as unfair or discriminatory and the demand for parity in payment is therefore, untenable.

36. So far as Towel and Soap Allowance is concerned, the Employers contend that this allowance which is paid at the rate of Rs. 30/- per month, is payable to all employees in the Factory in terms of earlier settlement signed with the Employees' Union on 26th April, 1991. This Union which has demanded in their charter of demand dated 2nd January, 1990, that soap and towel/napkins should be supplied to the employees working in the Factory by the Management. Since distribution and supply of these items was administratively inconvenient, the Management had agreed to pay an allowance in lieu to all employees in the Factory, except to employees in the Factory who were on job of purely administrative nature like, stenographers, clerks, librarian. The payment of this allowance cannot be considered, according to the Employers, as discriminatory, as alleged by the Workers' Union and the demand of the Union for payment of this allowance to all employees of the Company, irrespective of the nature or location of work, is totally unjustified.

37. Turning to the Annual Performance Award, the Employers contend that in the settlement dated 25th April, 1994, signed by the Employees' Union, the Management agreed to evolve an additional Performance Award Scheme for designated categories of workmen, viz., Craftsmen, Mobile Equipment Operators, Pump Operators, Technicians and Laboratory Assistants in Operations, Maintenance, Laboratory, Plant Engineering Services, Civil Overseers and Draftsmen in Projects and Technical Services. The Employers further contend that they have been paying annual Performance Awards each year to all the employees, depending on the production levels achieved during the year. The amounts payable at various levels of capacity utilisation are defined in the Awards Table, annexed to the settlements. The awards payable at various levels of capacity utilisation differ as per grade of each employee. The Awards Table however, does not take into consideration the nature of jobs of employees. This Scheme is essentially an incentive scheme to reward the employees for higher production achieved due to their contributions.

38. The Employees' Union had demanded that the employees directly involved in the production process should be paid additional awards, i. e. they should receive amounts more than the employees who are not directly involved in the production process. The Employers, in the settlement dated 24th March, 1994, signed with the Employees' Union agreed to evolve a scheme by which additional amounts would be payable to the designated employees, viz., Craftsmen, Mobile Equipment Operators, Pump Operators, Technicians and Laboratory Assistants in Operations, Maintenance, Laboratory, Plant Engineering Services, Civil Overseers and Draftsmen in Projects and Technical Services. The Workers' Union, however, opposed this additional payment since in their view it is discriminatory. The Employers submit that the payment of incentive at differential rates is a common practise obtaining in various industries, whereby the employees engaged directly in actual production process are paid higher incentive amount. The contention of the Workers' Union, that additional amounts should not be paid to designated categories listed above, is not only misconceived but mala fide.

39. The Employers have also contended that since the Workers' Union has voluntarily accepted the difference in the rates of allowances under various settlements signed earlier and the same have been incorporated in a settlement after process of bilateral negotiations, the Workers' Union is estopped from raising a dispute alleging unfair discrimination.

40. Regarding the nature of service of the employees working in the Factory and those at the Administrative office are not only different because of the rigorous conditions, but also because the employees in the Factory were required to work for 48 hours per week before 1984 (later reduced to 44 hours schedule in 1991), i. e. more than the working hours of employees in the Administrative Building. The employers contend, that all the employees viz., employees in the Administrative Building and those in the Factory were on

a 48 hours per week schedule till 1974 when the weekly hours of work of the employees in the Administrative Building were reduced to 40 hours per week by a settlement with the then representative Union. The settlement did not provide for any reduction in the emoluments to the segment of employees whose weekly working hours were reduced. Subsequently, in the charter of demands in 1979 and again in 1983, there was a demand from the employees in the factory represented by the Employees' Union that their working hours should be reduced to 40 hours, and that the Company should pay them a chemical/hazardous allowance, dust allowance and heat and noise allowance. The Company did not concede to the demands in toto but in 1984 agreed to reduced the working hours to 44 hours per week and also to pay a Factory Allowance to employees working in the Factory in lieu of chemical/hazardous allowance, dust allowance and heat and noise allowance, as also partial compensation for the extra working hours.

41. The Employers further contend that before 16th June, 1984, though a majority of workmen assigned to work in the factory were on a 48 hours per week schedule, three stenographers viz., Miss Linda Gurjao, Lorna Rebellos and S. Kenkre working at the works Office located in the factory premises, and one driver, Abdul Sutter were on a 40 hours per week schedule on a personal basis in terms of settlement dated 3rd May, 1974. Similarly, though the majority of workmen working in the Administrative Building at Zuarinagar were on a 40 hours per week schedule, Stenographers, Clerk/Typists, Draftsmen, Civil Overseers in the Projects and Technical Services Departments located in the Administrative Building were on a 48 hours per week schedule. The Technical Services and Projects Department which was housed in the factory was relocated in the Administrative Building in 1984, and continued to work on 48 hours per week schedule and later on 44 hours schedule even after the relocation; there was a tacit understanding with the Union to that effect.

42. Regarding the averment of the Workers' Union in their Statement of Claims, in para. 7, that after the settlement in 1981 the categorization of jobs in 'A' or 'T' Series ceased to be on the basis of their nature of work but was linked to the weekly hours is denied by the employees. The jobs were categorised on the basis of their location of work. The 'A' Series was for employees in the Administrative and Regional/Liasion Offices whereas employees in the Factory were categorised in 'T' Series. It is further submitted that exceptions to this norm were only the three stenographers placed in the Works Office and one driver who continued to be in 'A' Series on a Personal basis due to a provision in the settlement signed in 1974 as stated earlier.

43. Regarding the averment in para. 9 that the weekly hours of work for employees in 'T' Series work were reduced to 44 hours per week and a Factory Allowance at the rate of Rs. 25/- per month, for employees in this Series was introduced in terms of settlement signed on 16th June, 1984, is admitted by the Employers. However, they have denied that the statement that the factory Allowance was granted specifically to compensate all employees on 'T' Series for the additional hours they were required to work per week even after the reduction from 48 to 44 hours per week. As stated earlier, the Factory Allowance was introduced due to the demand of the Union for a chemical/hazardous allowance, dust allowance and heat and noise allowance to employees working in the Factory, as well as for the additional hours of work they were required to work. The lumpsum amount of Rs. 350/- and not Rs. 300/- as stated by the Union, was only to partially compensate for the additional working hours put in before they were effectively reduced to 44 hours per week. The Employers also submit, that the Factory Allowance was extended to six employees in the Projects and technical Services Department, even after they were transferred to the Administrative Building, because there was a tacit agreement with the Union that their grades and allowances would be protected.

44. As regards the discontinuation of Factory Allowance to some other employees viz., the two Time Keepers transferred from the Factory to the Administrative Building, it is consistent with the practice that factory Allowance or some such allowances should be payable to employees working in the Factory environment. The Employers therefore, submit that the concerned employees had consented to the transfer and the related loss of their allowances, as they had the advantage of reduced working hours even before the management had agreed to reduction of working hours. It is for this reason that no dispute was raised by the Workers' Union.

45. The Employers admit that the Factory Allowance was enhanced from Rs. 25/- per month to Rs. 80/- per month. The total linkage of Factory Allowances with working hours is however, denied by them. According to them, as averred in para. 8, the Factory Allowance was introduced as a composite allowance to partially meet the demand of the Employees' Union, due to their longer working hours as well as the working environment. The Employers denied that they had admitted (expressly or otherwise), that the factory Allowance was paid "only" as compensation for additional working hours. They have also denied that they had agreed to pay Factory Allowance to all employees.

46. The Employers further submit that since the factory Allowance paid to employees in 'T' Series was compensation towards the demand for chemical/hazardous, dust, noise and heat allowance, and additional working hours, this allowance was reduced from Rs. 80/- to Rs. 50/- per month upon reduction of working hours and was restricted to employees who work in the Factory and Technical oriented employees who report for work at the Administrative Office but spend most of their working time within the factory premises. The employees on purely administrative jobs working in the Factory like, stenographers, clerk/typists, librarian, stenos and telephone operators were made ineligible for this allowance in future though an amount of Rs. 36/- was merged in their salaries on a personal basis to mitigate the loss of emoluments. Consequent to this revision, the Factory Allowance become totally and essentially a special consideration for employees working in a hazardous factory environment and ceased to be a partial compensation for additional working hours. The Employers submit that the nature of duties and the work environment of employees working in the factory are substantially different from those in the Administrative Building.

47. The Employers, further contend, that the factory is a chemical process plant and the employees working therein are exposed to various hazardous and highly explosive chemicals like, Naphtah, Phosphoric acid, Ammonia, Potash etc. Besides, since the operations in the factory are on continuous process, the employees are required to work on rotating shifts. The Administrative Office of the Company is located outside the factory premises and the employees working therein are not exposed to the rigorous of factory environment. The Employers therefore, contend, that payment of allowance to a certain category of employees in consideration of work environment cannot be construed, as submitted earlier, discriminatory and the demand to extend the same to all employees even to those not exposed to this environment in the course of their normal duties, is not reasonable or justified. Regarding the merger of part of the above allowance in the basic salary of some of the employees, the Employers contend that it was done to mitigate the drastic reduction in the take-home pay of these employees. The Employers further submit, that the Workers' Union had deliberately concealed the fact that when the working hours of their members were reduced in 1974, no reduction of emoluments was effected in their salaries.

48. Regarding the contents of paras. 15 and 16 of the Statement of Claims, the Employers submit that the Washing Allowance was paid till 1990 to all employees provided with uniforms due to the nature of their duties. Uniforms were provided to all employees working in the factory premises, as well as to designated categories in the

Administrative as well as regional Offices like drivers and office attendants. These employees were paid a washing allowance of Rs.35/- per month. In the settlement dated 12th February, 1991 and settlement dated 26th March, 1991, the Washing Allowance was revised to Rs. 80/- per month. The Employers submit, that since uniforms were not provided to the Office employees, no washing allowance was payable to them. However, since employees at the Administrative Building also demanded that they should be provided with uniforms, it was agreed to issue them 2 pairs of uniforms per annum and this benefit was incorporated in their settlement. Subsequently, due to various representations from employees about the inadequacy of two pairs of uniforms for daily use of uniforms, the management after a review decided to offer an additional pair of uniforms. The washing allowances to these employees was limited to Rs. 40/- per month since the uniforms of employees working at the desk jobs do not get soiled as much as those of employees working in the factory premises. The employers have denied that any reservation was made by the Workers' Union while signing the settlement as alleged or at all.

49. Regarding towel and soap allowance, the Employers contend that it was introduced in 1991 due to a demand of the Employees' Union to provide soaps, towel and napkins to employees in the Factory. To minimise the administrative inconvenience involved in the periodic supply of these items, the Management agreed in lieu to pay an allowance which was designated as Towel and Soap Allowance. This allowance is payable at the rate of Rs. 30/- per month to all the employees in the Factory, except to those employees who though were assigned to factory, are on jobs of purely administrative nature and are also not required to work on shifts, like Stenographers, Clerk/Typists, Librarians. This allowance is also payable to Draftsmen and Civil Overseers in the Administrative Building due to the nature of their jobs.

50. The Employers denied that the jobs of designated categories of employees in the Factory like Personnel Assistance, Stores Assistants, Estate Maintenance Assistants, Supply and Distribution Assistants and Material Handling Clerks are identically same in all respects with the jobs of Assistants and Clerks working in the Administrative office. They also denied that payment to one group and denials to other is discriminatory or unfair for the reasons alleged or at all. The differentiation is based not only on the nature of job, but also on the environment in which the jobs are required to be performed.

51. Lastly, the Employers denied that they have shown any favouritism towards a section of employees by agreeing to evolve an additional performance award for technicians, craftsmen, pump operators, draftsmen and civil overseers. They submit that these categories of employees are directly involved in the production process and the provisions of an additional performance award to these categories is reasonable and confirms with practices obtaining in similar industrial establishments.

52. The Employers, therefore, pray that the Workers' Union has not made out any case for justifying their demands and much less with retrospective effect from 1st January, 1993. They therefore, pray that the demands may be rejected.

53. The Intervener has filed his Statement at Exh. 6.

54. The Intervener denies justifiability of any of the demands and alleges that the nature of duties of the workmen in both two sections differed from each other. The Administrative Section basically comprises of Clerks, Clerk/Typist, Stenos, Accountants, other clerical and administrative staff etc., while the factory staff consists of mainly Technical staff like, Diploma in Engineering, B Sc's Fitters, Turners, ITI etc. The nature of duties and categories of workmen differed, being different, the Union and the Management arrived at a settlement

and introduced certain benefits to the workmen employed in the Factory, under the settlement dated 16th June, 1984. The Employers as well as the representatives of the Workers Union, were very much aware of the demands for certain benefits like Factory Allowance in the settlement dated 16th June, 1984 and Soap and Towel allowance in the settlement dated 26th March, 1991, and the same was accepted by the Management and Workers Union because of the working conditions of the workmen in the Factory and therefore their demands are totally justified.

55. The Intervener further contends that majority of the workmen in the factory are working on shifts and are provided with change room as well as bathing rooms which are not provided for the workmen in the Administrative Building, represented by the Workers' Union. Basically, these change rooms and bathing rooms are provided to the factory employees because of their working condition like shifts, contact with poisonous and hazardous chemicals, acids, grease, etc. According to the Intervener, therefore, there exist total difference in the working conditions of the workmen represented by the Worker's Union and represented by Employees' Union, and it is for this reasons that benefits like Factory Allowance and Soap and Towel Allowances were provided for by the Company to the workmen working in the Factory and represented by the Employees' Union. He therefore, submits that the claims of the Workers' Union regarding Factory Allowance and Soap and Towel Allowances should be rejected.

56. Regarding Annual Performance Award, he submits that it is clearly stated in the settlement signed on 25th April, 1994 between the parties that additional performance award is only for section of the workmen who are directly involved in the production process of the Company.

57. The Intervener therefore, prays that all the claims of the Workers' Union be rejected.

58. Regarding the additional Written Statement filed by the Intervener (at Exh. 71), it was filed almost at the end of the proceedings when the recording of evidence was nearly at an end.

59. Before I deal with each demand separately, it would be relevant to briefly refer to the environmental conditions in the factory, Administrative Building and surroundings in as much as it is the contention of the Employers, that the Factory Allowance was given to only some employees working in the Factory shed for hardship faced by these employees, while working in the factory conditions and also partially for compensation for working for excess hours till 1991, when for the first time the working hours were reduced to 40 hours a week for all the employees working in the Company.

60. On behalf of the Workers' Union, the Union had examined two Witnesses, being witness No. 1, Shri D'Silva Rahul, who is working in Sales & Accounts Finance Division as Senior Assistant Accountant. He is working as a treasurer of the Union at present. Witness No. 2 is one Anand Mankesh Kantak, who is working in the Purchase Section coming under the material Department of the Company.

61. On behalf of the Employers, we have the evidence of witness No. 1, one Mr. Anthony Cordeiro. He is the Personnel & Industrial Relation Manager of the Company.

62. So far as the Intervener is concerned, he has examined himself being witness No. 1, and one Mr. Antonia Carvalao, witness No. 2.

63. Taking first the evidence of Shri D'Silva Rahul, Witness No. 1, for the Union he has told us in his examination-in chief, para. 10 at pages 19 and 20 that the Administrative Building is fully airconditioned. Out of the departments located in that building, only

Control Room, in Urea Plant and control room in Ammonia Plant are air-conditioned. He admits that so far as Urea Plant and Ammonia Plant are concerned, only their Control Rooms are air-conditioned. As regards Maintenance Department which comprises Maintenance Office and Maintenance Workshop, only Maintenance Office is air-conditioned. He admits that only Panel operators work in the Control Room. When he was asked about the workmen working at different Plants, he replied that he could not deny. Further, he was told that in Urea Plant there are 30 workmen working and in Ammonia Plant also there are 30 workmen working. In the Maintenance Office, which he says, is air-conditioned, there are officers, Clerk/Typists and one stenographer. He could not give the name of the Clerk/Typist or the stenographer sitting in the Maintenance Office, but when he was asked, whether or not, there was neither a Clerk-Typist nor a stenographer sitting in the Maintenance Office, he replied that he could not deny it. Regarding the spillage of chemicals during the Manufacturing process, he replied that he does not know whether there was any spillage during the manufacturing process. He also stated, that he does not know whether the noise level in the factory is 50 to 80 decibels. He however, admits that the noise level in the Administrative Office is much less than that in the Factory. In para. 11 at page 20, he admits that the environment in the factory is entirely different than that in the Administrative Building. He does not know however, whether the Personnel Assistant is required to take a round in the Plant. Out of the Telephone Operators working, only 4 are required to work on shifts and not the remaining two. Of the two, who are not required to work in shifts, are Pandu Sakhardande and Anthony Rodriques. He admits that all these Telephone/Telex Operators also cater to the factory. He further admits that most of the Departments in factory are working in shifts. Regarding the work of Stores Assistants at page 21, para. 12, he admits that it involves movement in the open yard and also godown. He further admits that their work involves taking delivery of material. It also involves, checking of quantities of materials. Further, he admits that the Stores Assistants are required to despatch rejected goods, and that they are also required to despatch the machinery requiring repairs. Materials handled by them, he admits, include also chemicals. He was asked, whether or not, the Stores Assistants are required to receive arsenic trioxide, he replied that he did not know it. In fact, he admits that he does not know, whether or not these chemicals are received there.

64. At page 22, para 13, he admits that all the drivers work in shifts and the Transport Department itself is situated in the factory. He further admits that the drivers report to the Transport Department in the Factory.

65. At page 22, para 14, regarding S & D Assistants, he admits that they are attached to S & D Department, which is located in the Administrative Building. He further admits that S & D Assistants work in shifts. Those S & D Assistants working at the Railway Siding are required to attend to the loading of goods and not unloading. However, he admits that he had never visited the Railway Siding and therefore, he does not know about the environment at the Railway Siding. He however, says that these S & D Assistants are required to attend to loading and sealing of wagons. In para. 15, at page 23, he admits that S & D Assistants, who work in the Administrative Building do not work in shifts. They work in an air-conditioned environment. He further admits that the uniforms given to the S & D Assistants in the Administrative Building, are different from those given to S & D Assistants at the Railway Siding. He however, does not know whether this difference is because of the environment. As regards the nature of the work of S & D Assistants, he says that the S & D Assistants in the Administrative Building, feed rate despatch in the computer. They also enter despatch order in the computer. They prepare daily production and despatch charts. They also process monthly rental payment to the warehousing in the region and attend to verification of handling of bills of warehousing and rail heads. This verification is done with stock statements. This they do, to process the settlement of the bills. Lastly, he admits that

the work done by S & D Assistants in the Administrative Building is not required to be done by S & D Assistants at the Railway Siding.

66. Regarding 4 Excise Clerks referred to by him in Para. 4, at page 9, he says that they are not designated as 'Excised Clerks', but they are Material Handling Assistants. They are attached to the Excise Department which is in the factory. They work in shifts. He admits that these Assistants are exposed to factory environment.

67. Regarding the Clerk referred to by him, with reference to R & H Department (Cost Centre) at page 9, 12th line, he says that though he does not know the name of the Clerk, he knows the nature of his work and the nature is clerical. But he does not know whether his work is to monitor and keep track of the stocks of Potash received and consumed every day. He also does not know whether this clerk works in the Potash godown. He however, admits that this Potash godown is located in the Factory. He does not know whether this Clerk is required to go to Potash Godown. In fact, he admits he does not know what work this Clerk does.

68. Regarding Estate Maintenance Assistance, he admits that their work is to supervise the cleanliness and hygienic condition of the toilet in the Plants as well as in the Estate. He does not know whether the number of toilets and bath rooms is about 120. But he admits that he is also (Estate Maintenance Assistant) required to supervise, cleaning, mopping of control rooms, health centre situate in the Factory premises. His work also includes supervision of the plumbing in the factory related to drinking water and electric maintenance related to canteen. When he was specifically asked, whether or not, this Estate Maintenance Assistant was basically exposed to factory environment, he denied it, but when he was asked whether or not 75% of his job relates to Factory Estate, he replied that he could not say.

69. Regarding Drivers he admits that the Drivers in the Regional Offices are not required to work in shifts.

70. At page 34 in para. 35, he admits that he had visited the factory premises during the course of production and he admits that the workmen in the factory put on dust masks while doing their work.

71. In para. 37 at page 36, about the spillage of various material at the Railway Siding, he has denied that stocks of materials are maintained to repack finished product. He was further asked whether or not there are stitching machines kept at the Railway Siding, and he says that he had not seen them there. He has denied that stitching machines are kept at the Railway Siding to stitch bags which are ruptured. He has also denied that any stitching machines are kept at the Railway Siding for stitching repacked products of ruptured bags. He however, admits that one or two bags are ruptured when they are in the process of being transported from Bagging Plant to the Railway Siding. He admits that where any such bag is ruptured, product packed in it falls out, but he denied that such product absorbs moisture and then decomposes. He denied that if such product is decomposed, it gives out strong smell of ammonia. He however, admits that the product manufactured by the Company absorbs moisture, but he denies that thereafter it decomposes. He also denies that after it absorbs moisture, it gives out Ammonia. In fact, he says that he has not smelt Ammonia and he cannot therefore say that it gives out a strong smell. He has denied that the breakage rate to the bags of finished product is to the extent of 2 to 3%. He admits that Supply and Distribution Assistants are required to check that right number of wagons are placed at the Railway Siding for loading each of the products. He further admits that they are required to check the number of bags loaded in each of the wagons.

72. In para. 39 at page 37, he admits that the Time Office is located in a building adjacent to the gate of the factory. His attention was drawn to Exhibit 77, the sketch of the factory and its side, and then he admitted that the Time Office is as close to the factory as the works Office and that the Time Office is not air-conditioned when he was asked regarding the noise, he denied that the noise of the factory reaches the Time Office. He was also asked whether or not smell emanating from the factory also reaches the Time Office, he denied that fact also. When he was asked whether or not a fleet of Furnace Oil Tankers pass by the Time Office frequently, he admitted this fact, though he denied any knowledge that approximately 10 tankers ply up and down, nor does he know whether or not each tanker makes atleast one trip to the factory in one hour. He does not know whether or not every 5 to 6 minutes, two tankers pass by the Time Office. He however, admits that the road on which the tankers ply is adjacent to the Time Office. He denied that the tankers make a lot of noise while passing by the Time Office. He however, admits that potash and orgon are carried in the trucks and these trucks pass by the Time Office. He however, denied that some time ammonia is also carried in these trucks to the factory. He also denies that because of the plying of the trucks and tankers and passing by the Time Office, noise level is very high. He even denies that the noise level is about 35 to 40 decibels. He admits that the employees of the Company have been receiving Safety Gifts on completion of certain number of safe working hours. He was specifically asked whether or not on 10th December, 1988 one Tanu Kenkre, a sanitary workman met with an accident. He however, admits that it may be that on account of that accident, the Safety Gift for the seventh million man-hour was lost by the employees of the Company. So far as the Administration Building is concerned, he admits that there was no accident in that building.

73. Turning to Witness No. 2, Mr. Kantak, in his evidence at page 39, para 42, he says that the working environment in the Stores Department, is the same as that in the Administrative Building. He however, admits that except two cabins, one of the Stores Manager and the other of the Stores Assistant, who operates the computer, the rest is not air-conditioned. He admits that the employees in the Stores Department receive Factory Allowance at the rate of Rs. 50/- per month, Washing Allowance at the rate of Rs. 120/- per month and Soap and Towel Allowance at the rate of Rs. 30/- per month, but he admits that all the employees in the Stores Department do not receive these allowances. However, Junior Typist Clerk, Mrs. Smriti Kamat Dakankar does not receive Factory Allowance, Soap and Towel Allowance, but regarding Washing Allowance, she receives it only at the rate of Rs. 80/- per month. At page 50 in para 57, he states that between the S & D Assistants at the Railway Siding and the S & D Assistants at the Regional Offices, the S & D Assistants at the Regional Offices are more exposed to fertilizers than S & D Assistants at Railway Siding. According to him fertilizers which are located at the Railway Siding are received by S & D Assistants at the Regional Offices. He further says that there is no deterioration in the conditions of fertilizers during the period required to reach the destination, i. e. the Regional Office. As regards the bagging of fertilizers at the port, he says that it is done by contract labour and S & D Assistants from Administrative Building do not supervise this bagging operations. He wants us to believe that there is a difference between the working environment at the Railway Siding and at the Regional Offices, in that the S & D Assistants at Regional Offices are more exposed to fertilizers than the S & D Assistants at the Railway Siding. It is needless to say that the evidence in this behalf referred to by me above and given by the witness No. 1, Shri D'Silva, is contrary to the evidence given by this witness. In fact, S & D Assistants at the Railway Siding are more exposed to environmental condition at the Railway Siding where these S & D Assistants are required to work, than the S & D Assistants working in the Regional Offices where the bags are received.

74. Regarding stock verification, the witness admits in para. 82 at page 74, that stock verifiers are provided with helmets. He further admits that the materials kept in the Stores include heavy to light machinery, and also chemicals. He denies that it also includes oil, but he admits that it includes grease also. In fact, his cross-examination shows that he could not have any access to this Stores, because entry into this Stores, is with written permission, and he admits that he was never given written permission to enter this Stores. However, he admits that stock verification involves physical checking of the stocks. He further admits that prior to 1991, stock verifiers were sitting in the Stores Department in the Factory itself.

75. As regards Material Handling Assistants, the witness admits that they are required to work in Excise Department, which is located in the factory premises. He admits that this Department is not air-conditioned. Excise Department is located near the Boiler Plant according to the employers, but this witness says that it is about 90 metres away from the Boiler Plant. According to the Employers, it is located within 30 metres of the Boiler Plant. He however, admits that the noise coming from the Boiler Plant reaches Excise Department. He was further asked whether or not, Material Handling Assistants are required to countercheck the material going out of the Factory and the witness denied it. He however admits that the bags of product are loaded on to the lorry at the Bagging Plant, but he denies that the Gate Pass for the product loaded on to the lorry is issued by Excise Department. He however, admits that the product loaded on to the lorry, is mentioned on the despatch note. He further admits that these despatch notes are stamped by the Excise Department before the lorry leaves with the product. He further admits that these despatch notes are stamped by the Excise Department only after the weight of the product is checked.

76. As regards Estate Assistants, in para. 85 at page 75, the witness admits that the work of the Estate Assistants involve remaining out of the office in the field. Their works take them to any part of the Estate of the Company. He further admits that they are also required to move around in the factory in the course of their work. But he ventures to deny that their work environment is adverse compared to the work environment of the Administrative staff.

77. As regards Warehousing Assistants, they were first located in the Administrative Building at the time of signing the settlement at Exh. 35, dated 30th December, 1987. The nature of their job at that time was clerical. In 1991, Warehousing Assistants were described as "S & D Assistants". As regards S & D Assistants working at the Railway Siding he denies that they were designated as Traffic Assistants in the year 1987 settlement. He however, admits that in 1987 they were working at the Railway Siding. He further admits that the nature of their work in the year 1987 and that at present is the same.

78. In para 94, at page 78, the witness admits that all workmen are subjected to audio metric tests. He further admits that audio metric test is undertaken to find out the hearing ability of the employee, but he denies that these tests are taken because the Company knows that the noise level in the Company is high. He also denies that these tests revealed that there is a continuous and appreciable loss in the hearing ability of the workmen, working in the factory.

79. In para. 99 at page 82, the witness was asked about the Stores Department, and he stated that only one employee who is a Stores Assistant and whose name is Sequeira, sits in the air-conditioned place in the Stores Department. In all, there are 15 Stores Assistants, one Junior Typist/Clerk, 3 Officers and 4 Yard Gang. Sequeira attends to the computer and the place where the computer is installed, is airconditioned. He denies that that Stores Department is at a distance of about 10 to 15 metres from the Ammonia Plant. According to him, he stated that it is 40 metres away from the Ammonia Plant. He was asked whether or not, the Stores Assistants mainly handle

materials, he stated that they only prepare documents relating to materials. He however, admits that the Stores Assistants receive the material. He further admits that after verifying the quality and quantity of the material, they prepare the records. He further admits that they also do the work of binning the material. The receipt of bags is done by the Stores Assistants, and issuance is done by the contractor. The Stores Assistants direct the contract or to take the bags and the contractor asks his workmen to take the bags. He however, admits that the Stores Assistants are also required to work in the chemical godowns attached to the Stores. They are also required to attend to the material stored in the yard. They also supervise removal of scrap stored in the yard. In fact, he admits that the work of the Stores Assistants required them to move to various places in the Factory.

80. In para. 104, at page 184, he was asked whether or not, Draftsmen, Technicians in maintenance Department, Material Handling Operators in Potash Godown are exposed to Grease and chemicals, and he denied the fact. He however, admits that the workmen in the aforesaid categories are exposed to the environment much more than those in the Administrative Building. When he was asked whether or not, the environment to which they are exposed is in respect of grease, chemicals, heat etc., he denied it. He however, admits that draftsmen are exposed to grease and noise; Technicians are exposed only to heat and noise and librarians are exposed to chemicals.

81. Regarding Maintenance workmen, he says that they do not work in shifts, but though some of them do, while others work in general shift. He however, admits that the maintenance workmen are frequently required to work overtime when there is breakdown or shut-down. He also admits that when there is a breakdown, even at midnight they are called. He further admits that these maintenance workmen are exposed to grease and noise.

82. As regards vehicle Drivers, he says that the duties of all vehicle drivers consist only of driving. They are not required to maintain the cars. There is no exposure to grease for vehicle drivers but their exposure to dust is the same for all the drivers. He admits that when drivers come to work, they are required to change their personal clothes for uniform.

83. Regarding the working environment of the Telephone Operators/ Receptionists and the Telex Operators, including the three telephone/telex operators, the witness says it is the same. He however, admits that the three telephone/telex operators were designated in 'T' Series. He however, denies that they were put in 'T' Series because they work for more than 40 hours a week. In fact, the evidence shows, that they were put in 'T' Series because they were working for more than 40 hours a week.

84. Turning to the witness examined on behalf of the employers, in para. 12 at page 227, he says that the factory at Zuarinagar is a chemical plant and ammonia and salts of ammonia are produced in this factory. Chlorine gas is used in the factory. He further says that grease and deleterious substance are used in the Factory. He further says that factory environment includes, gas, vapour, fumes and dust. In certain areas of the factory, the levels of noise are high. He further says that there are fire and explosion risks in the factory. The workmen in the factory are provided with washing facility and soap and towel allowances are given since the nature of the work required them to cleanse themselves. He further says that washing facility, soap and towels are required to be provided under the factory Act and Rules.

85. The next relevant topic for the purposes of demands in dispute in these proceedings is the classification. The Witness No. 1, for the Union has told us in para. 5 at page 9, that under 1977 settlement dated 25th June, 1977 Exhibit 31, the workmen were classified into two categories (1) Technical and (2) Administrative. Employees hold-

ing B.S.C. qualification, those holding Diploma Engineering Certificates, and also Graduates in Engineering and Craftsmen were included in the category 'Technical' and all the employees doing administrative work, were classified as 'Administrative' category. The Technical category was known as "T-Series" and the Administrative category was known as "A-Series". The workmen working in Works Office, Time Office, Transport Department, Estate Department, Stores Department, Excise Department and Railway Siding came under 'A-Series'. In the year 1981 in the settlement, Exhs. 32 and 33, dated 5th January, 1981 and 3rd October, 1981 respectively, there was no change in the classification. However, by separate minutes (Exh. 93) in the year 1981, between the management and the Employees Union, this classification for the first time was changed and that change was subsequently incorporated in the settlement of 1984. That change was, that all the workmen working for 48 hours per week, irrespective of their nature of working and location where they were working, were classified under "T-Series" and those workmen who were working for 40 hours a week, irrespective of their location, were classified under 'A-Series'. According to this classification, those employees coming under 'A-Series' were working for 40 hours a week and those under "T-Series" were working for 48 hours a week. The witness further says that the workmen in the Works Office, Time Office, Transport Department, Estate Department, Stores Department, Excise Department and Railway Siding in the factory premises were placed in 'T-Series', except for 4 employees viz., 3 stenographers and 1 Driver; though these 4 employees were also working in the Factory premises, they were not put in 'T-Series', because they were working for 40 hours a week. Regarding the Drivers employed in the Regional Offices, other than the drivers working in the factory premises, they were working for 39 hours a week prior to 1991 settlement. These Drivers were put under 'A' Series. Under the 1984 settlement, the drivers working in Regional Offices were not paid Factory allowance while the Drivers working in the Factory premises were paid Factory Allowance, except for one who was working for 40 hours a week, though this driver was working in the Factory premises. After the 1991 settlement all the Drivers working in the factory as well as in the Regional Offices, started working 40 hours a week. The Driver, Abdul Sattar was working 40 hours a week, and was not receiving Factory Allowance.

86. Then, we have the evidence of Witness No. 1 (the intervener). At page 111, in para 130, this witness says that prior to 1981 he was a member of the Employees' Union, when there was only one Union. He denies that classification of workmen in two different categories, Technical and Administrative, was done under Exh. 31, but it was done in 1972 and again he says that it was introduced in 1974. It is obvious that he does not remember in which year this classification was introduced. Apart from it, he further says that under the settlement dated 30th April, 1974, the Company and the Employees' Union had agreed to refer the rationalisation of wage structure to one Dr. K. Pennatur. He however, does not know whether Dr. K. Pennatur has submitted his report dated 29th August, 1974. According to him, after Dr. K. Pennatur submitted his report, however, suggesting classification, the first settlement under which classification was introduced was dated 3rd March, 1974. His attention was drawn to the classification under the settlement, Exh. 31 dated 25th June, 1971 at pages 15 and 16. Here, he admits after going through the pages No. 15 and 16, that classification of Administrative Grades (at page 15 of Exh. 31) corresponds to classification of "A-Series" at pages 34 and 35 of the settlement, Exh. 32 dated 5th January, 1981. He further says that properly, the classification of Technical Grades (at page 16) corresponds to classification of "T-Series" (at page 32 of Exh. 32). But he denies that the Job classification agreed to, by the workmen at pages 32 to 35, was connected with the working hours. However, he admits that amongst the persons in 'T-Series' at Exh. 32, there were workmen working 48 hours a week, and some workmen working 40 hours a week. He further says that Junior Warehousing Supervisors in T-5 Series are those who are working in the Railway Siding and the workmen in A-7 Series, Junior Housing

Supervisors, were working in the Regional Offices and Administrative Building. According to him, the Analytical Assistants in T-7 Series at Exh. 32 (5th January, 1981) were working 40 hours a week and all the rest were working for 48 hours a week in "T-Series". The Analytical Assistance in the laboratory were working 48 hours a week and those Analytical Assistants in the Regional Offices were working 40 hours a week. In 'A-Series' there were employees who were working 48 hours a week and also employees working 40 hours a week. In other words, this witness wants us to believe that in the classification between the two categories - 'A-Series' and 'B-Series' there were workmen both working for 48 hours a week and 40 hours a week, in both the categories designated, 'T-Series' and 'A-Series'. The other evidence, however, shows that statement is not correct. At page 115, in para. 131, he says that after Dr. K. Pennatur submitted his report suggesting classification, the first settlement under which classification was introduced was dated 3rd September 1974, but this settlement is not on record. At page 128, in para. 139 he admits that prior to the minutes (Exh. 93), all Drivers irrespective of the fact, whether they were vehicle drivers or A. V. Van operators were classified in 'A-Series' including the vehicle Driver, Abdul Sattar. He further admits that prior to the minutes (Exh. 93), Vehicle Drivers in the factory were also classified in 'A-Series' and they were in 'A-7' regardless of whether they were in factory or regional Offices. He however, admits that the drivers working in the Factory were doing duty for 48 hours a week, while those working in the regional Offices were first working for 39 hours a week and thereafter 40 hours a week.

87. Witness No. 2, for intervener in para. 17, page 194 says that the vehicle drivers in the Regional Offices were classified in 'A-Series'. All drivers who were working for 48 hours a week prior to 1984 and 44 hours a week after 1984, were classified in 'T-Series' and all the remaining drivers who had never worked for 48 hours or 44 hours a week, were classified in 'A-Series'. According to him thereafter, there was re-classification of the workmen from 'A-Series' and 'T-Series' from 1981 and this classification was on the basis of working hours. The only exception was in respect of Analytical Assistants, in as much as all the Analytical Assistants were shifted to 'A-Series'. He admits that since 1984 settlement there was no exception made in the classification of workmen based on working hours. He admits that all the workmen who were working 48 hours a week prior to 1984 settlement were classified in 'T-Series' and all the workmen who were not working for 48 hours a week, were classified in 'A-Series'. He further admits, that this classification was regardless of location. As regards, stenographer, he says that there were stenographers, some of whom were classified in 'A-Series' and others in 'T-Series' in the factory premises. As regards, Tom Fernandes, Felix Fernandes, Dilip Shetye and Mrs. Selda Rodrigues, he says that Tom Fernandes, Felix Fernandes and Dilip Shetye were classified in "T-Series" while Mrs. Selda Rodrigues, was classified in 'A-Series'. In para 18, at page 195, he admits that the classification based on working hours continued till 1991, and in 1991 for the first time working hours for all the categories were made uniform and the uniform working hours were 40 hours a week for all the categories. He further admits that when the working hours were made uniform for all the workmen in 1991, simultaneously, 'A-Series' and 'T-Series' were abolished and under the settlement of 1991, "U-Series" were introduced in place of "A-Series" and "T-Series" and both "A-Series" and "T-Series" were fitted in "U-Series". His attention was drawn to settlements, Exhs. 36 and 37 of the year 1991, at pages 91 and 110 respectively, and he stated after going through these pages, that under clauses 2.1 and 2.1.1 Exhibits 36 and 37, respectively, 'A-Series' and 'T-Series' were fitted in 'U-Series'. He also admits that after 1991, a Clerk-Typist-whether in the factory premises or Administrative Building, starts in the same scale.

88. At page 190, in para 14, he has told us that re-classification was made between 'A-Series' and 'T-Series' under the minutes, Exh. 93, dated 8th October, 1981. He further says that apart from this

reclassification, there was no other reclassification made between 1984 and 1991. This reclassification under Exh. 93, he says, was done only by shifting certain categories from 'A-Series' to 'T-Series'. No categories were shifted from 'T-Series' to 'A-Series' indicating thereby that all the categories in 'T-Series' prior to this shifting under Exh. 93, were working for 48 hours a week. Regarding Analytical Assistants, he says that according to him, they were shifted from 'T-Series' to 'A-Series' by the settlement of 1984. No other category was shifted from 'T-Series' to 'A-Series' or vice-versa by the 1984 settlement. It would thus be seen that originally in 1974, the classification was between the two Series, 'A-Series' and 'T-Series'. Thereafter, under Exh. 93, the minutes, there was reclassification on the basis of working hours, in that all workmen working for 48 hours a week, irrespective of their nature of work, environment or place of working and all the workmen working for 40 hours a week were put in 'A-Series'. Thereafter, in 1991, when the working hours were made 40 hours a week for all the workmen without any exception, 'A-Series' and 'T-Series' were abolished and by combining the categories in both the series, "U-Series" was started. It would appear from clause 2.1.1 that in revising the grades in 'T-Series' and 'A-Series' following method was followed:

T-1	—	A-1	U-1
T-2	—	A-2	U-2
T-3	—	A-3	U-3
T-4	—	A-4	U-4
T-5	—	A-5	U-5
T-6	—	A-6	U-6
T-7	—	A-7	U-7
T-8	—	A-8	U-8
T-9	—	A-9	U-9
T-10	—	A-10	U-10
T-11	—	A-11	U-11
T-12	—	A-12	U-12

90. It would thus be clear that when after the classification into two categories viz., 'A-Series' and 'T-Series', the reclassification in 'A-Series' and 'T-Series' was solely based on working hours and after the working hours were made common for all the workmen, being 40 hours a week, 'A-Series' and 'T-Series' based on working hours were abolished and new 'U-Series' was started.

91. Turning next to the working hours and particularly, the linkage of 'A-Series' and 'T-Series' to the working hours, the evidence of witness No. 1, for the Union, at more than one places, has denied that these Series, viz., 'A-Series' and 'T-Series' were based on working hours. In this connection, I may refer to the admissions of the Workers Union in their Statement of Claims at pages 7, 8, 9 and 10 of this Award. At page 7, the recitals are these:

"As a consequence, all workmen who worked for 48 hours per week, were reclassified and placed in 'T-Series' salary/wage scales, while all workmen who worked for 40 hours per week were classified in 'A-Series'. Thus, a clear linkage was created between the schedule of working hours and the salary/wage scales of workmen, and the classification in 'A-Series' and 'T-Series' was separated from the erstwhile distinction between the administrative and technical workmen."

92. Then, at page 8, we have another recital which clearly says that according to the Workers' Union, what was known as "Factory Allowance" was in fact not factory Allowance properly so-called under the Factories Act and Rules, but it was compensation paid for working for extra hours, when the workmen in 'T-Series' were working 48 hours a week till 1984 and thereafter from 1984 till 1991, 44 hours a week. In this connection, this is what the recital at page 8, speaks:

"This allowance, which was granted specifically to compensate the workmen for the extra hours of work put in by them, was called 'Factory Allowance'."

In fact, in 1984, in the charter of demands submitted by the Employees' Union they had demanded that with effect from 1st October, 1983, the working hours of every workmen should be reduced to 40 hours a week and compensation to be paid for the extra working hours put in from 1st October, 1979 to 30th September, 1983. However, the working hours reduced from 48 hours a week to 44 hours a week only (vide Exh. 118, page 1). Thereafter compensation was paid for working 48 hours a week between 1st October, 1983 to 16th March, 1984 a lumpsum payment of Rs. 350/- (not Rs. 300/-) to employees in 'T-Series' as compensation for extra 4 hours per week during the said period (vide page 8, Exh. 4, para. 12). Here again, it is stated in the Statement of Claims at page 8, thus:

"Most significantly both the lumpsum payment as well as the 'Factory Allowance' granted vide the settlement dated 16th June, 1984 were paid to all workmen working 44 hours per week (formerly 48 hours) irrespective of the work place and irrespective of whether they belonged to the administrative or technical categories."

93. Again at pages 9 and 10 (Exh. 4), it is stated that thus there was no manner of doubt that the said allowance, though nominally designated as a 'Factory Allowance' was in fact nothing but a compensation towards the extra four hours of work put in by workmen on the 44-hour schedule.

Thus, it is clear even according to the Workers' Union, what was paid for 4 hours extra working in 1984, was not factory allowance, but compensation for working for 4 hours extra per week (by the workmen in 'T-Series') in 1984.

94. Turning to the oral evidence on this issue apart from the admission of the Union in the Statement of Claims, reference may be made to para. 30 (pages 32-33; 78/70; 76/92; 117/93; 128/110; 130/114; 132/117; 133/118; 119; 120 and 121; 134/123; 136/126; 137/126; 138/127; 128; 139/129; 140/130; 141/133; 143/136; 145/140; 149/149; 150/151; 151/152; 155/155; 156/156; 101/185-186; 151/191; 157/192 and 22/202).

95. Then, on behalf of the Employers, we have the evidence of Shri Cardeiro, Witness No. 1. Reference may be made to para 8/224; 9/225; 14/229; 16/230; 18/233 and 19/234-235.

96. In view of my comments made above, I do not want to refer to this evidence, except on the point of linkage on working for extra hours to 'Factory Allowance'. At page 119, para. 133, the witness says that it may be correct to say that all persons shifted under the minutes (Exh. 93) from 'A-Series' to 'T-Series' were those persons who were working for 40 hours a week. He further says that he does not remember, whether after the minutes (Exh. 93), all the persons classified in 'T-Series' were persons working on 48 hours a week and/or persons classified in 'A-Series' were persons working 40 hours a week. At page 123, para. 134, the witness denies that one Anthony D. Cunha, who was a stenographer under A-7 and was working for 48 hours a week stated by him earlier, was a wrong statement. According to him, the correct statement is, that he was in A-8, and he was designated as Stenographer Works. He denies that he was designated under A-8 because he was working for 48 hours a week. But he volunteers that he was designated in A-8 because of the nature of the work. Then in para 147 at pages 144-145-146, the witness has made an attempt to say that the increase in washing allowance was as a result of working more than 40 hours, earlier 48 hours and later 44 hours a week. But in the present proceedings it is nobody's case that the increase in washing allowance at any time, was as a result of working for excess hours. In para 149 at page 149, however, the witness admits that the Factory Allowance was granted to all workmen working for 44 hours a week regardless of location. He further admits that this Factory Allowance was not granted to any workmen working 40 hours, regardless of location of work. In the same page and in the same paragraph, the witness admits that the demand for reduction of hours was partially granted in as much as the working hours for 'T-Series' were reduced from 48 hours to 44 hours a week. He attempts to say that 'Factory Allowance' was introduced at

the rate of Rs. 25/- per month, under the settlement and that this Factory Allowance was granted to all workmen in 'T-Series' who were working for 44 hours a week under the settlement. This Factory Allowance was granted to workmen in 'T-Series' regardless of the location of work; it was granted to all workmen working for 44 hours a week, regardless of location. He also admits that Factory Allowance was not granted to any workmen working 40 hours a week regardless of location of work. It is therefore, obvious that payment of the so-called Factory Allowance was linked to excess of working hours. At page 151, para. 150, the witness admits that the increased Factory Allowance was paid to all workmen, working for 44 hours a week, irrespective of location of work. He further admits that no Factory Allowance was paid to workmen working 40 hours a week irrespective of location of work. Then again, in the same page in para 150, he admits that under the settlement, Exh. 22 dated 30th December, 1987, the provision made for payment of Factory Allowance is, to all workmen in 'T-Series' regardless of location of work. At page 162, in para. 157, the witness says that all those Clerk-Typists who received Factory Allowance were the category which worked for 48 hours a week prior to 1984 and 44 hours a week from 1984 to 1991. He further admits that the Clerk-Typists who did not work for 48 hours a week prior to 1984 and 44 hours from 1984 to 1991, did not receive Factory Allowance. Likewise at page 185, para 10, another witness admits that under the settlement of the year 1984, some Clerk-Typists and stenographers who were in the factory premises, were not paid Factory Allowance while some other Clerk-Typists and stenographers working in the factory premises were paid Factory Allowance under the 1984 settlement. Obviously, those who were paid Factory Allowance were working for 48 hours while those working in the factory but were not paid Factory Allowance obviously because they were working for 40 hours a week. At page 192, para 15, the witness admits that Factory Allowance was introduced and paid only to those workmen who were working for 48 hours a week. He further admits that it was not paid to any workmen who were working for 40 hours a week. Similarly, he admits that under the 1984 settlement, Factory Allowance was introduced only to workmen in 'T-Series' (i.e. who were working for 48 hours a week). He also says that the 1984 settlement does not make any reference to location of work, so far as the Factory Allowance was concerned. Similarly, the settlement of 1984 also does not make any reference to the environment, so far as the Factory Allowance was concerned. The Factory Allowance was paid to all employees in 'T-Series' regardless of the location of work, and it was not paid to any employees in 'A-Series' regardless of location where they were working.

97. Witness No. 1, for the Employers, Shri Cardeiro says in para 16 at page 230 that from 8th October, 1981 till the settlement of 1991, the classification between 'A-Series' and 'T-Series' was directly linked with the working hours. He further says that this classification had no connection with the location of work, nor was it connected with the nature of work. Then, at page 233 in para 18, he says that payment of Factory Allowance was completely independent of location of work. He further says that it was totally dependent upon the number of working hours. At page 235, he admits that the drivers in the Regional Office were not paid Factory Allowance, because they were not required to work 48/44 hours a week. He also says that after 1991, there is no difference in the working hours of drivers in any of the location.

98. It would thus be seen, that the classification of workmen in 'A-Series' and 'T-Series' under the minutes (Exh. 93) were based on working hours, in as much as all the workmen placed in 'T-Series' were working for 48 hours and later on 44 hours a week and all workmen placed in 'A-Series' were working for 40 hours a week till 1991. Similarly, the payment of the so-called Factory Allowance, which was really a compensation for working for extra hours, was paid only to the workmen in 'T-Series' and none-else.

99. Turning to the contention of the Workers Union, that some workmen who were not working for 48 hours or 44 hours a week, but were working only for 40 hours were also paid Factory Allowance and in some cases Washing Allowance also, the Union had led some evidence, and I

will refer to it presently. At page 11, the witness No. 1 for Workers Union has stated that Abdul Sattar was working for 40 hours and therefore was not receiving Factory Allowance, but after he retired the driver who was appointed in his place, is receiving Factory Allowance though he is working for 40 hours a week under the 1991 settlement. There is absolutely no evidence to support this statement. On the contrary, we have on record another witness, stating that the driver who came in place of Abdul Sattar is not receiving Factory Allowance. Apart from this, the best evidence would have been the Pay slip of the Driver which would have shown whether he was paid Factory Allowance or not. Then, in para 6, at page 17, this witness wants us to believe that Civil Overseers and Draftsmen were both treated as Technical workmen, and it is also admitted by this witness that they both do a job of technical nature but are not entitled to receive Factory Allowance, and still they are paid Factory Allowance. In his evidence here, in para. 6 page 17, he denies that the nature of their work requires them to remain present on the Factory premises, but he admits that it is not his case that they are not required to visit the factory premises. He however, denies that the two draftsmen in the Administrative Building are required to remain on the factory premises, for major part of the day. He also denies that Overseers sittings in the Administrative Building are required to spend most of their time either in the factory premises or on the site or both. He however, admits that the Overseers sitting in the Administrative Building supervise civil works and construction at the site. Then, later on, in para. 7, he admits that prior to 1984, draftsmen and overseers were working on the factory premises, and that they were relocated in the Administrative Building sometime in the year 1984. Similarly, he further admits that the Civil Overseers, Draftsmen and Personnel Assistants were receiving Factory Allowance and Washing Allowance also before their relocating in the Administrative Building. Similarly, after they were relocated, they continued to receive Factory Allowance. Turning to para 22, at page 28, the witness says that two stenographers, one clerk-typist, 3 telephone operators on shifts receive Factory Allowance in the form of merger in the basic salary. Here, he admits that their Factory Allowance, which they were receiving was merged in basic wages, with effect from 31st December, 1989. Obviously, because under the 1991 settlement when working hours at the rate of 40 hours a week were introduced for all the workmen and Factory Allowance which was, as I have already indicated paid as compensation to the workmen working for more than 40 hours a week, was abolished, in order to protect the pay of these employees, the Factory Allowance paid as compensation was merged in their basic pay and since 1991 therefore, there would be no question of them receiving Factory Allowance. Then at page 41, para. 44, reference is made by the witness to Librarians and Clerk-typists, who receive Factory Allowance at the rate of Rs. 50/- per month, Soap and Towel Allowance at the rate of Rs. 30/- per month and washing allowance at the rate of Rs. 120/- per month. They also receive a site allowance at the rate of Rs. 160/- per month. This reference, is obviously of under the settlement of 1994. In this connection, it must be borne in mind that they were working for 48 hours and they were entitled to compensation in terms of Factory Allowance. Obviously, therefore, when under the settlement of 1991, the working hours were made uniformly 40 hours a week for all the workmen and compensation in terms of Factory Allowance was abolished, those workmen who were entitled to factory allowance as such were paid Factory allowance at the rate of Rs. 50/- per month. It is not disputed that these workmen were receiving Factory allowance earlier. After the settlement of the year 1991 expired and new settlement was entered into between the parties in 1994, the same Factory Allowance was continued. As regards Soap and Towel Allowance and washing allowance, I would refer to these Allowances later on. At page 43, in para. 47, it is contended that some stenographers in factory receive factory allowance, but it is merged in the basic and this factory allowance is not given to stenographers working in the Administrative Building. Accordingly Mrs. Shirley Kenkre does not receive Factory Allowance merged in basic though she works in the Factory. Here, again those stenographers working in Factory receive factory allowance, since they were working for 48 hours a week, and under the 1991 settlement this Factory Allowance, which was paid to them as compensation was merged in basic pay, just to protect their total wage. Mrs. Shirley Kenkre was working

for 40 hours per week and therefore she was not entitled to receive Factory allowance. In her case, therefore, the question of merging the factory allowance with basic pay could not arise. Same is the position regarding Clerk-Typist referred to in para. 48. Likewise, Librarians and Clerk-Typists at page 45 para 50, also do not receive factory allowance, but whatever factory allowance they were receiving prior to 1991 settlement was protected by merging it in their basic pay, because they received Factory Allowance prior to 1991, as they were working for 48 hours per week. The same is the position regarding the two stenographers in the Administrative Building referred to in para 51, at page 45. Then, regarding Stock Verifiers, referred to in para. 53, page 46, it is no doubt true, that they sit in the Accounts Department in the Administrative Building, but they were also working for 48 hours per week and thereafter 44 hours a week. They therefore, receive Factory Allowance at the rate of Rs. 50/- per month and this Factory Allowance is being paid to them because they are treated as Factory workmen considering their nature of work and what is paid to them is Factory Allowance proper, and not the compensation, which was being paid in terms of settlement prior to 1991. The same position is regarding the Draftsmen B. L. Verekar and D. G. Khorde and Civil Overseer Shri T. A. Fernandes. It is no doubt true that they sit in the Administrative Building, but they were also working for 48 hours a week and therefore, they were paid Factory Allowance as compensation till 1991, and thereafter they are paid Factory Allowance as such, at the rate of Rs. 50/- per month obviously because their work is of technical nature. The same is the case, with Material and Handling Assistants, and also the Estate Assistants. Regarding S & D Assistants, only the S & D Assistants at Railway Siding receive Factory Allowance at the rate of Rs. 50/- per month. Regarding the other S & D Assistants working in the Regional Offices and in the Administrative Building who were working only for 40 hours a week, are not paid Factory Allowance. The S & D Assistants at Railway Siding were working for 40 hours a week till 1991, and were receiving compensation in terms of Factory Allowance, which was discontinued and Factory Allowance proper was paid to them at the rate of Rs. 50/- per month, considering the nature of their work, to which I have already made a reference. Regarding the two Draftsmen, one Overseer, two Stenographers and one Clerk, who were transferred from Factory to Administrative Building in 1984, after they were transferred they were not required to do any duty in the Factory. Though, therefore, originally they were working in the factory premises after they were transferred to the Administrative Building, they ceased to be entitled to the Factory Allowance. As regards Library Assistants referred to in para. 61 at page 62, they were working for more than 40 hours a week under the Factory premises and obviously, therefore, they having worked for more than 40 hours a week, they became entitled to Factory Allowance, even after the Factory Allowance in the form of compensation was abolished and Factory Allowance as such at the rate of Rs. 50/- per month was paid under the 1991 settlement. The same is the position regarding Stores Assistants. Regarding the volunteered statement of the witness at page 61, para. 71, that some workmen in the Works Office receive Factory Allowance merged in their basic, he was asked that in the Works Office, there was no workmen except the Draftsman whose Factory Allowance was merged in the basic pay, which he denied. But he has not stated, if there were any other workmen in the Works Office, who also receive Factory Allowance merged in basic pay. Similarly, in para 72 at page 62, the witness stated that about 13 workmen who are the members of the Employees' Union who sit in the Administrative building receive Factory Allowance, Towel and Soap Allowance and new and additional Performance Award also. He also volunteered a statement that 3 Telephone Operators receive Factory Allowance merged in the basic pay. The names of these workmen, he has given, as Tom Fernandes, Dilip Shetty and Fenex. One Mr. Korgaonkar, who is a clerk, one Mr. A. D'Cunha, who is a stenographer also receive Factory Allowance, merged in their basic. He admits that they receive these allowances under settlement of 1991. His attention was drawn to Exh. 37, page 112 and clause 2.11(a) and they receive Factory Allowance merged in basis. This is obviously because they were working for 48 hours/44 hours and Factory Allowance in terms of compensation was abolished, under the settlement of 1991. They were therefore paid Factory Allowance because they were treated as Factory workmen considering the nature of their work and therefore, they were paid Factory Allowance as such, after 1991. As regards workmen in Workshop, the witness has stated that some stenographers and some clerks receive Factory Allowance merged in their basic, which is not correct. Except Draftsmen, nobody else receives Factory Allowance.

100. It would thus be seen that there is no substance in the contentions raised on behalf of the Workers' Union that some workmen are paid Factory Allowance, even after the 1994 settlement.

101. Coming to the demands themselves in dispute with reference to :-

- a) Factory Allowance;
- b) Washing Allowance;
- c) Soap & Towel Allowance; and
- d) Additional Performance Award.

I would first refer to the earlier settlements which are before us in the Chart (Exhibit 118). These settlements each of them refers to the demands in the dispute in the present proceedings.

102. Turning first to the Factory Allowance, we have before us the settlement of the year 1984 in which the demand of the Employees' Union was for Allowance of Rs. 200/- per month as chemical/hazardous Allowance to be paid to all the employees in T-Series. This demand was settled effective from 1st October, 1983 in which Factory Allowance was agreed upon between the parties at the rate of Rs. 25/- per month for employees in T-Series and the settlement further stated that Factory Allowance shall not be payable for days of unauthorised absence. (Vide clause 16, settlement Exh. 19 dated 16th June, 1984). There was also demand from the Workers' Union for Factory premises risk/hazardous Allowance at the rate of Rs. 150/- per month, and this demand of the Workers Union was also settled for Factory Allowance at the rate of Rs. 25/- per month and that allowance was also settled to be payable to the workmen in 'T-Series'. What is to be noted here, is that there was no demand from the Workers' Union for Factory Allowance for the workmen of their Union. Obviously, therefore, there was neither demand from the Workers Union for their workmen, nor was their demand settled for Factory Allowance for their workmen. I have already pointed out that originally, the entire body of workmen, working in the Company was divided into two groups - one categorised as "A-Series" and the other categorised as "T-Series". Obviously, therefore, there was no demand for the workmen in "A-Series".

Thereafter, in 1987, there was demand for Factory Allowance by the Employees Union covered by "T-Series" for Rs. 100/- per month and this demand was settled for Factory Allowance at the rate of Rs. 80/- per month, to all employees again in 'T-Series' and not in 'A-Series' (Vide Exh. 21 dated 30th December, 1987).

Similarly, there was a demand from the Workers' Union for Factory Allowance at the rate of Rs. 100/- per month, and the demand clearly stated that demand was for employees working directly, or indirectly at the Factory premises.

In this demand in 1987 also there was no demand by Workers Union for Factory Allowance, for employees in 'A-Series' or for their own members.

Then, in 1990 the Employees' Union submitted a fresh demand for payment of Factory Allowance at the rate of Rs. 250/- per month, and also for paying the Factory Allowance as part of basic for calculation of terminal and other benefits. This demand was settled effective from 1st January, 1990. Only employees working in the Factory Vasco Installation, Damsite and projects and Technical services, excluding employees who were on 40 hours schedule per week will receive Rs. 50/- per month as Factory Allowance; however, effective from 1st January, 1990 employees in the position of Stenographers, Clerk-Typists and Clerks in Works Office and Projects & Technical Services, Librarian, Telephone/Telex Operators currently drawing Factory Allowance will not receive Factory Allowance, but an amount of Rs. 36/- will be merged in the basic salary as on 31st December, 1989.

In separate paragraphs, the parties agreed that employees on 44 hours schedule will be paid Rs. 80/- per month as Site Allowance from 1st January, 1990. All these from 1st January, 1991.

The Workers' Union had also presented its demands requesting for Rs. 140/- per month to all employees in 'T-Series' and 'A-Series'. This demand was settled as follows:-

Effective from 1st January, 1990 the employees working in the Vasco Installation, Damsite and Projects and Technical Services, and Telephone/Telex Operators will receive Rs. 130/- per month as Factory/Site Allowance. However, effective from 1st January, 1991 employees in the Factory currently on 40 hours schedule per week, new entrants in the position of Stenographers, Clerk/Typists and Clerks in the Works Office and Projects and Technical Services, Librarian and Telephone/Telex Operators and all other employees will receive Factory/Site Allowance at the rate of Rs. 80/- per month (Vide Exh. 24, dated 12th February, 1991).

103. It will thus be seen that for the first time, a demand was made by the Workers' Union for Allowance at the rate of Rs. 80/- per month, for all the employees working directly or indirectly in the Factory premises. Here, again no demand was made for Factory Allowance for the workmen in 'A-Series'. It is no doubt true, that there was also another demand for Rs. 140/- per month for all employees in 'T-Series' and in 'A' Grades. This demand was also settled from 1st January, 1990. Employees working in the Factory Vasco Installation, Damsite, Projects and Technical Services and Telephone/Telex Operators will receive Rs. 130/- per month as Factory/Site Allowance. However effective from 1st January, 1991, employees in Factory currently on 40 hours schedule, new entrants in the position of stenographers, Clerk/Typists and Clerks in Works Office and Projects and Technical Services and all other employees will receive Factory/Site Allowance at the rate of Rs. 80/- per month. (Vide Exh. 24 dated 12th December, 1991).

104. Then we have in 1993 another charter of demands submitted by the Employees' Union for Factory Allowance at the rate of Rs. 500/- per month and for treating the same as part of basic pay for calculation of terminal and other benefits. This demand was settled in these terms viz.,

The Factory Allowance currently paid remained unaltered.

Effective from 1st January, 1993, all employees will be paid Rs. 160/- per month as Site Allowance (Vide Exh. 25 dated 25th April, 1993).

There are similar charter of demands from the Workers Union for Factory Allowance/Site Allowance at the rate of Rs. 300/- per month. The Management offered Factory Allowance/Site Allowance in the following manner:-

(a) Employees who received Rs. 130/- per month as Factory/Site Allowance as per earlier settlement will now receive Rs. 160/- per month as Site Allowance and Rs. 50/- per month as Factory Allowance;

and

(b) Employees who received Rs. 80/- per month as Factory/Site Allowance as per the previous settlement will now receive Site Allowance of Rs. 160/- per month and no Factory Allowance.

105. This was only as offer made by the Management, but the Union demanded that all their members be paid Rs. 210/- per month as Factory/Site Allowance. The Management did not agree to the Union's demand and it was decided between the parties to refer the matter to a jointly appointed Arbitrator (Vide Exh. 26 dated 22nd June, 1994). Thus, there could be no settlement between the Workers' Union and the

Management, on their last charter of demands. What is to be noted in this settlement is that there was no separate demand for Factory Allowance by the Workers' Union and their demand except the amount, was more or less in the same words as the demands of the Employees' Union.

106. The parties have adduced oral evidence in support of their demands for Factory Allowance. I have already referred to the names of the witnesses examined in this dispute by the parties on both the sides.

107. The Witness No. 1, Shri D'Silva, on behalf of the Workers' Union has stated in para. 5, page 10, that the Drivers employed in the Regional Offices, other than the Drivers working in the Factory premises, were put in 'A-Series' because they were working for 40 hours a week, but there were Drivers employed in the Factory and they were working for 48 hours a week, and they were put in 'T-Series' under the minutes (Exhibit '93'). He further says that the workmen in the Works Office, Time Office, Transport Department, Estate Department, Stores Department, Excise Department and Railway Siding in the Factory premises were placed in "T-Series". However, four employees viz., 3 stenographers and 1 Driver, though they were also working in the Factory, they were not put in 'T-Series' because they were working for 40 hours a week. The Drivers working in the Regional Offices, were working for 39 hours a week prior to 1991 settlement. These Drivers were put in 'A-Series'. These Drivers, under the settlement of 1984 were not paid Factory Allowance, while the drivers working in the factory premises were paid Factory Allowance, except for one Driver, who was working for 40 hours a week and whose name I have already referred to as Abdul Sattar. This Driver, though he was also working in the factory premises, was not paid Factory Allowance. Then, at page 11, in the same paragraph he admits, that Abdul Sattar was not paid Factory Allowance, but after he retired, the Driver who came in his place was paid Factory Allowance. I have already stated that the employee who was posted in the place of Abdul Sattar was not paid Factory Allowance. Then, at page 17, para. 6, and page 18, we have reference to Draftsmen and Civil Overseers. It appears, that prior to 1984, Draftsmen and Overseers were working in the factory premises and they were relocated in the Administrative Building sometime in the year 1984. Similarly, Personnel Assistants, who were working in the Factory Premises, were relocated in the Administrative Building, sometime in the year 1984. The witness admits, that Civil Overseers, Draftsmen and Personnel Assistants were receiving Factory Allowance before they were relocated in the Administrative Building. After their relocation, the Draftsmen and Civil Overseers continued to receive Factory Allowance, but the Personnel Assistants after they were relocated in the Administrative Building, their Factory Allowance was discontinued. It is, therefore, clear that Civil Overseers and Draftsmen were receiving Factory Allowance before the 1991 settlement. At page 29, in para. 25, the Witness also admits that the nature of work of the set of workmen receiving Factory Allowance was different from the nature of work of the workmen who were being paid Factory Allowance at the rate of Rs. 80/- per month. (Vide also para. 27, at pages 30, 31 and 33 of the evidence of witness No. 1).

108. Then we have the evidence of Witness No. 2, for the Union. In para. 42 at page 39, he refers to the employees in the Stores Department and says that these employees receive Factory Allowance at the rate of Rs. 50/- per month. Similarly, at page 41, he refers to Librarian and Clerk/Typists, who he admits receive Factory Allowance at the rate of Rs. 50/- per month. He further says that Mrs. Sherley Kenkre, did not receive Factory Allowance, though she received washing allowance at the rate of Rs. 80/- per month. At page 42, para. 46, he refers to Male Nurses and says that they also receive Factory Allowance at the rate of Rs. 50/- per month. In para. 50, at page 47, he corrects the error committed by him (at page 41), while giving the amount of allowance received by the Librarian and Clerk/Typists and says that they did not receive Factory Allowance. The amount of Rs. 36/- was merged in their basic scale. Regarding Estate Assistants (at page 48 in para. 55), he admits that Estate Assistants also received Factory Allowance because according to him,

they were working for more than 40 hours i.e. at the rate of 44 hours a week prior to 1991 settlement. Regarding S & D Assistants in para. 56 at page 48, he admits that S & D Assistants at Railway Siding received Factory Allowance, while those in the Regional Offices and in the Administrative Building do not receive any Factory Allowance. (Vide also page 50, in para. 57). Then, in para. 72 at page 62, he was asked whether or not, no workmen in the Administrative Building received Factory Allowance, except for the Draftsmen, Civil Overseers and Stock Verifiers and he replied that 3 Telephone Operators receive Factory Allowance merged in the basic, and one Stenographer and one Clerk also received Factory Allowance. Then at page 63, para. 72, he admits that all employees in 'T-Series' including Civil Overseers receive Factory Allowance at the rate of Rs. 80/- per month. He also admits that the Draftsmen where in 'T-Series' and therefore, they also receive Factory Allowance under the settlement. He further says that the Draftsmen and Overseers continue to receive Factory Allowance even after 1991 settlement. Then, in para. 78 at page 68, he refers to the employees in Works Office and admits that none of the workmen, except draftsmen, receive Factory Allowance though he volunteers to say that some Clerks and some Stenographers also receive Factory Allowance merged in their basic. He was asked whether or not, some of the Stenographers and Clerks in the Workshop do not receive Factory Allowance merged in their basic. His attention was drawn to the Stenographer Mrs. N. R. Kamat who is working in Works Office, and when he was shown her pay slip (at Ex. 87), he admitted that she was not entitled to receive Factory Allowance. As regards Estate Assistants and S & D Assistants (vide para. 85 at page 75, para. 86 at page 76), he admits that they receive Factory Allowance.

109. Turning to the evidence of the Intervener, Witness No. 1 (at page 89 in para 114) he refers to the duties of Civil Overseers and states that Civil Overseers received all the allowances, including Factory Allowance. At page 90, he admits that the nature of the job of Civil Overseers is technical. He tells us that for the first time in 1994, Factory Allowance was granted under the settlement with the Workers' union. The demand was for environment allowance by the Workers' union, and the same was settled as 'Factory Allowance'. As regards Factory Allowance of the Clerks in the Works Office, he says that the same was discontinued in 1991. Similarly, Factory Allowance of the Clerks of the Project Department was also discontinued. The reason was, that the Works Office prior to 1984, was situated in the middle of the plant, by the said of Ammonia Plant. In the middle of 1984, the clerks in the Works Office (near Ammonia Plant) were transferred to a new building where the environmental conditions were better. Due to the constraints of the space in the Factory, Projects and Engineering Department was also transferred to the Administrative Building. The environmental conditions of the clerks in the Project Department therefore, were changed. At page 91, para. 116, the witness says that in 1974 the working hours of the workmen in the Administrative Building were reduced from 48 hours to 40 hours a week and as a result at that time there was no increase in the wages of the factory workmen, nor was there a decrease in the wages of the administrative workmen. In 1984 when there was reduction in the working hours from 48 to 44 hours a week, at that time also there was no increase in the wages of the workmen in the Administrative Building, nor any decrease in the wages of the workmen in the factory. Then, in para. 142 at page 134, there is a reference to Office Attendants, and the witness says that no factory allowance was paid to the Office Attendants. In para. 145, at page 140, he refers to Librarian and says that he was paid Factory Allowance. In para. 147, at page 145, he refers to the S & D Assistants at Railway Siding and says that they were paid Factory Allowance. Similarly Draftsmen receive Factory Allowance (vide para. 155 at page 155). Similarly, Time Keepers also receive Factory Allowance (vide para. 156 at page 156). Similarly, Stores Clerk/Typists received Factory Allowance in 1991 (vide para. 157, page 161). Accounts Assistants also receive Factory Allowance (vide para. 159 pages 162 to 163). He further states that Estate Assistants also receive Factory Allowance (vide para. 159 and para 160, at pages 163 and 164).

110. Coming to the Witness No. 2, on behalf of the Intervener, at page 169, para. 2 he says that Factory Allowance was first introduced in 1984

settlement under Exhibits 19 and 20. The demand raised by the Employees' Union at that time was for 'chemical hazardous allowance' and by the Workers' Union for 'environmental allowance'. These demands came to be settled as "Factory Allowance" since the Company had objections to the nomenclature of 'chemical hazardous allowance'. The Company had also objections to the nomenclature of 'environmental allowance'. The Factory Allowance was given to those employees whose work location was inside the factory. Accordingly, all the Drivers inside the Factory at Zuarinagar received Factory Allowance with the exception of Abdul Sattar, to whom I have already made a reference.

111. We have also the evidence of Witness No. 1, Cordeiro, examined as Witness No. 1, on behalf of the employers. In para. 18, page 233, he says that factory Allowance was granted exclusively to the employees who were working for 48 hours a week before 1984 and 44 hours a week thereafter. It was not granted only to the Factory employees. He admits that some of the employees receiving Factory Allowance, were working in air-conditioned environment. He also admits that it was also granted to some workmen working in the air-conditioned new Works Office. He clearly states that Factory Allowance did not depend on the location of the work when it was introduced. It also did not depend on the working environment. He says that no person who worked for 40 hours a week though located in the factory premises received the Factory Allowance. No person working for 48/44 hours a week, though located in the Administrative Building was denied Factory Allowance. He further admits that those who worked for 40 hours a week prior to 1984 did not receive Factory Allowance, wherever they may be located. He lastly admits that payment of Factory Allowance was completely dependent of location and was totally dependent upon the number of working hours.

Regarding S & D Assistants, he says that the nature of their duties are generally similar to those of the S & D Assistants at Railway Siding at Zuarinagar. The working environment of both these sets of Assistants, is not similar, because the S & D Assistants at Railway Siding work every day at the Railway Station whereas the S & D Assistants at Regional Offices are not working every day at Railway Station, godown etc. When the S & D Assistants work at Railway Siding and Godown, then the environment is same.

As regards S & D Assistants at Regional Offices, he says that they were not paid Factory Allowance, because they were not required to work 48/44 hours a week. However, after 1991 there is no difference in the working hours of S & D Assistants at any location.

112. It would thus be seen that the so-called Factory Allowance which was being paid to the workmen since after about 1974 was not paid as Factory Allowance as such, but was compensation for working for more than 40 hours, 48 hours prior to 1984 and 44 hours after 1984 till 1991. I have already pointed out that this position is clearly admitted by the workers' Union itself in its Statement of Claims. Secondly, once the working hours were made uniform for all the workmen at the rate of 40 hours a week in 1991, there was no question of payment of Factory Allowance to any workman, other than Factory Workmen and in fact were found that after abolition, the so-called Factory Allowance which was paid as compensation, Factory Allowance proper under the Factories Act and Rules, was paid at the rate of Rs. 50/- per month to the Factory workmen.

As regards the workmen in the Administrative Building, or the workmen other than those who were technical workmen, there could be no question of payment of Factory Allowance to them after 1991. In fact, I have already pointed out that there was never any demand for Factory Allowance proper by the Workers' Union to the employees. It is no doubt true, that after 1991, when uniformity in working hours was introduced by the Employers, there could be no question of payment for working for more than 40 hours a week. But that is precisely what is done by the Employers in this case after the settlement of 1991, and while doing it they are trying their best to protect the wage of the concerned workmen. It must be borne in mind, that the so-called Factory Allowance could either be Factory Allowance proper under the Factories Act, or compen-

sation for working extra hours more than 40. But as a result of introduction of uniformity in the working hours in 1991, there could be no question of payment of Factory Allowance in the form of compensation. It could only be Factory Allowance proper so-called under the Factories Act and the Rules made thereunder. Obviously, the Workers' Union could not claim that Factory Allowance, unless they show that any of its members, is entitled to the Factory Allowance, in the sense in which it is being paid after 1991 to the Factory workmen. In fact, I am told that at least two workmen have received that advantage under the settlement with the Workers' Union. In my opinion, therefore, the demand of the Workers' Union, for payment of Factory Allowance at the rate of Rs. 50/- per month is unjustifiable.

113. The next demand is washing allowance.

Here, again it is necessary to refer to the earlier settlements regarding washing allowance between the parties. In 1984, the Employees' Union had made a demand for washing allowance at the rate of Rs. 60/- per month. This demand was settled between the parties and the settlement was, that all the employees provided with the Company's uniforms, shall be paid washing allowance at the rate of Rs. 20/- per month [vide Exh. 19 dated 16th June, 1984 - clause 12(b)]. Similarly there was a demand from the Workers Union also and the demand was that all employees should be paid washing allowance at the rate of Rs. 100/- per month for employees in the Factory and Rs. 75/- per month for other employees. This demand was settled on the same terms as those in the settlement with the Employees' Union, and the amount of allowance agreed upon between the parties was also Rs. 20/- per month. It should be noted here that the demand from the Workers' Union was, that the rates for the Factory workmen and other workmen should be Rs. 100/- per month and Rs. 75/- per month. While settling the demands, the Workers' Union agreed to the payment of Rs. 20/- per month, for all the workmen including the Factory workmen.

In 1987, there was a demand again, for increasing the washing allowance from Rs. 20/- per month to Rs. 50/- per month by the Employees' Union, but the settlement was, that washing allowance would be paid at the rate of Rs. 35/- per month for employees provided with Company's uniform (Vide Exh. 21 dated 30th December, 1987). At this time, there was no demand from the Workers Union, but the same settlement of demand of washing allowance at the rate of Rs. 35/- per month, for all the workmen was made applicable to the members of the Workers' Union also (Vide Exh. 22 dated 30th December, 1987).

Then, in 1990 the Employees' Union made a demand for washing allowance at the rate of Rs. 40/- per month, per pair of uniform, for the workmen in 'T-Series'. The settlement was that effective from 1st January, 1990, the washing allowance for all employees presently provided with uniforms will be enhanced to Rs. 80/- per month. All other employees provided with uniforms in terms of this settlement will receive washing allowance at the rate of Rs. 40/- per month, effective from 1st January, 1991. New entrants provided with uniform in categories of Stenographers, Clerks, Clerk/Typists in Works Office and Projects and Technical Services and Librarian will receive Rs. 40/- per month, as washing allowance (vide Exh. 23 dated 26th March, 1991).

At this time, the Workers Union also submitted its charter of demands and regarding washing allowance they asked for washing allowance at the rate of Rs. 70/- per month for employees provided with Company's uniforms. They also demanded that payment of Rs. 70/- per month should be made applicable to all employees in administrative staff. This demand was also settled as follows:-

Effective from 1st January 1990, washing allowance for all employees provided with uniform, will be enhanced to Rs. 80/- per month. All other employees provided with uniforms in terms of this settlement will receive washing allowance at the rate of Rs. 40/- per month, effective from 1st January, 1991. New entrants provided with uniform in the categories of Stenographers, Clerks and Clerk/Typists in Works Office and Project and Technical Services and Librarian, will receive Rs. 40/- per month as washing allowance.

Then, in 1993, the Employees' Union again made a demand for washing allowance at the rate of Rs. 50/- per pair per month to all employees. But the settlement was that effective from 1st January, 1993, employees presently drawing washing allowance of Rs. 80/- per month will receive Rs. 120/- per month, and those receiving Rs. 40/- per month will receive Rs. 80/- per month. The Workers Union also submitted its demands for washing allowance, effective from 1st January, 1993, and the demand was that all employees provided with uniform, should be paid washing allowance at the rate of Rs. 250/- per month.

The Management offered to pay effective from 1st January, 1993 a sum of Rs. 80/- per month as washing allowance to the employees presently drawing Rs. 40/- per month and Rs. 120/- per month to those employees who are presently drawing Rs. 80/- per month. Since the Union demanded parity in payment of washing allowance to all the employees of the Company at the rate of Rs. 120/- per month and the Management did not agree, the matter was referred jointly to the Arbitrator, for arbitration.

114. Now, what is contended on behalf of the Workers' Union is, that there is no justification for difference in the rate of washing allowance between the workmen of the Employees' Union and the workmen of the Workers' Union.

The Learned Counsel, Shri Chander Singh, appearing on behalf of the Workers' Union has contended that so far as the workmen of the Workers' Union are concerned, there cannot be two rates - one for those who had received uniform before 1991, and the other for those who had received uniform under the settlement of 1991 and the new entrants.

It is no doubt true, that clause (a) of the offer made by the Employers was in accordance with the rates made applicable to the workmen of the Employees' Union. Clause (b) makes a difference, and it is this, that whereas for the employees who received uniform under the 1991 settlement and new entrants, the rate was Rs. 40/- per month, while those who had already received uniforms before the settlement of 1991, they were paid Rs. 80/- per month as washing allowance.

115. Now, before I discuss these submissions made on behalf of the workers' Union, I would refer to the oral evidence.

The Witness No. 1, for the Workers' Union refers to the alleged disparity in para. 8 at page 13 between those workmen of the Workers' Union, who had already received before 1991 uniform, and those who were to receive uniform under the settlement of 1991 and new entrants. In this connection, he refers to the Chart prepared by him (at Exh. 67). At page 6, where he attempts to point out the effect of the payment of washing allowance under the settlement of 1991, which anomaly according to him was continued even under the settlement of 1994. The Chart shows that the Clerk/Typists, Material Handling clerks, Assistants and Librarian in factory premises were already provided with uniform prior to 1991 and employees in factory premises, who were being provided with uniform in terms of 1991 settlement. The employees in factory premises who were already provided with uniform prior to 1991 receive Rs. 80/- per month while those who were provided with uniform under the settlement of 1991 receive Rs. 40/- per month. The same is the position regarding the employees in the Administrative Building. Those employees in Administrative Building who were already provided with uniform prior to 1991 settlement receive Rs. 80/- per month, as washing allowance, and those who have been provided with uniform in terms of 1991 settlement receive Rs. 40/- per month as washing allowance.

116. Then, in 1994 settlement the position is the same with the difference that where the washing allowance was Rs. 80/- per month, it became Rs. 120/- per month and where it was Rs. 40/- per month, it became Rs. 80/- per month. The Witness No. 1, in his evidence at page 43, para 48, refers to this fact resulting from the difference in the rates. At page 45, in para. 51, he says that two Stenographers in the Administrative Building receive washing allowance at the rate of Rs. 120/- per

month, and the remaining stenographers receive washing allowance at the rate of Rs. 40/- per month, while all the stenographers in the Factory premises receive Rs. 120/- per month, and the remaining at Rs. 40/- per month. He says that both the sets of Stenographers receive 3 pairs of uniform each.

Then, in para. 155, at page 155, he refers to Draftsmen and Overseers and says that they were receiving Rs. 120/- per month. Similarly, the Estate Assistants also would receive Rs. 120/- per month and they also receive two sets of uniforms.

In para. 56 at page 48, the reason given is that because the workmen who are receiving Rs. 120/- per month, as washing allowance work for more than 40 hours, that they were paid washing allowance at a different rate, i.e. Rs. 120/- per month.

It is nobody's case in these present proceedings, that washing allowance was increased from Rs. 80/- per month to Rs. 120/- per month, for those workmen who were working for 48 hours a week in 1984, and thereafter 44 hours a week till 1991. Then again, in the same paragraph, he says that S & D Assistants in the Regional Offices and Administrative Building, receive washing allowance at the rate of Rs. 40/- per month, and those working at the Railway Siding receive Rs. 120/- per month (Vide also para. 57 at page 56).

Then, in para. 59 to page 51, he refers to Draftsmen, Overseers, two Stenographers and one Clerk transferred to the Administrative Building from the Factory, and says that they receive this allowance at the rate of Rs. 120/- per month (Vide para. 59, page 51).

Regarding employees in the Administrative Building, some of them receive washing allowance at the rate of Rs. 120/- per month, who are one stenographer and one Clerk, while other employees in the Administrative Building receive the same allowance at the rate of Rs. 40/- per month, though they are supplied Factory uniform.

As regards Laboratory Assistants in the factory premises, they receive washing allowance in full, at the rate of Rs. 120/- per month (Vide para. 61 at page 52).

Analytical Assistants in the Regional Office receive washing allowance at the rate of Rs. 40/- per month (Vide para. 92 at page 78). It is suggested that Analytical Assistants are supplied apron, washed by the Company.

Similarly, he says that all technical workmen are receiving washing allowance at the rate of Rs. 120/- per month (vide para. 95, page 80).

117. Then, we have the evidence of witness for the Intervener.

In para. 117, at pages 92-93, he says that Stenographers in Projects & Engineering Department, Office Attendants, Civil Overseers, Draftsmen, Telephone/Telex Operators and Stock Verifiers receive washing allowance at the rate of Rs. 120/- per month, though actually their offices are in the Administrative Building.

Then, in para. 119 at pages 94-95, he says the Technical workmen in the Administrative Building also receive washing allowance at Rs. 120/- per month.

In para. 142, at page 134, he says that Office Attendants also receive washing allowance at full rate Rs. 120/- per month.

Similarly, the S & D Assistants at Railway Siding also receive washing allowance at the same rate.

In para. 147 at page 45, he tells us that the higher rate is linked with the working hours. In other words, those who were working for more than 40 hours a week, are paid washing allowance at Rs. 120/- per month, but

as I have already stated, that it is nobody's case in the present proceedings that washing allowance was increased from Rs. 80/- to Rs. 120/- per month for those workmen who were working for 48 hours a week till 1984 and thereafter for 44 hours a week till 1991.

As regards Heavy Van Operators, they are not paid washing allowance (Vide para. 151 at page 152).

Then, Accounts Assistants (para. 159 at pages 162 and 163), Estate Assistants (para. 160 at page 164) also receive washing allowance at the rate of Rs. 120/- per month.

118. Then, we have Witness No. 2 for the Intervener.

As pages 172 and 173 para 2, he says that with the exception of Stores Clerk/typists, all Typists in Production, Maintenance, Laboratory Health Centre Personnel, Stores Assistants, Estate Assistants, Draftsmen, Civil Overseers, Shovel Operators, Team Operators, Excise Clerks, S & D Assistants at Railway Siding, Attendants, Drivers and Time Keepers attached to factory receive washing allowance at higher rate. Yard Gang, Librarian, Clerk-Typists at Works and /Project Office receive washing allowance at a higher rate.

He gives all together a different reason for higher rate. He says that these workmen receive washing allowance at a higher rate, because of the overall rise, nearly the same with the other workmen drawing the same basic pay. The entire work of the workmen who receive washing allowance at a higher rate is dusting, heat, soiling of cloths and want of air-conditioned accommodation. He further says that the employees drawing washing allowance at a higher rate need to change their uniforms more frequently, than those employees not receiving this allowance at a higher rate. In certain cases, the employees getting higher washing allowance have to change their uniforms twice a day. The employees who were paid washing allowance at a higher rate in order to maintain the overall rise, and these were Librarian, certain Clerk/Typists in the Works Office and Clerk/Typists in the Projects and Technical Services. He also says that the yard gang receive washing allowance at a higher rate because their nature of work requires it. The same was the basis, these rates were continued by paying Rs. 40/- per month to all workmen under the settlement of the year 1994.

119. But these are not the reasons given in the pleadings of the Management. In this connection I may refer to the relevant recitals in para 2, under the title, "Washing Allowance", in their (Employers') reply at Exhibit. 9. According to the Employers, the provision of uniform to the factory employees is need based and is a universal practice obtaining in most of the factories in India. Merely, because the Management having conceded to the demand of the Workers' Union has provided uniforms to Office employees, it is not obligatory that there should be parity in the payment of the washing allowance. It is an irrefutable fact, that uniforms of persons working in a factory environment and exposed to dust and other adverse conditions get soiled more frequently and consequently need washing more frequently. The payment of washing allowance at differential rates, cannot be assailed as unfair or discriminatory.

It is therefore, obvious that according to the Employers, the difference in the rates is based on two reasons;

Firstly, the uniforms to the Factory workmen are need based; and

Secondly, the uniforms of Factory workmen get soiled very often because they are exposed to dust and other adverse conditions and therefore, they are required to be changed frequently.

It is, therefore, difficult to accept the reason given by this witness, particularly, when in the beginning washing allowance was paid to all the workmen at uniform rates and the increase therein was also made from Rs. 20/- to Rs. 35/- per month uniformly.

120. Coming to the evidence of witness, examined on behalf of the Employers, viz., Witness No. 1, Shri Cordeiro, has told us at page 244, that the rate of washing allowance differs depending on the nature of the work.

121. It would thus be seen that regarding the difference in the rates, the Employers have given their reason, which I have already pointed out and it is based on two factors, one is that the uniforms supplied to the Factory workmen were need based and they require to change their uniforms frequently because of the soiling thereof in adverse factory conditions. I have already pointed out that two witnesses have in their evidence said, that the rates of washing allowance depended on the working hours in as much as those who worked for more than 40 hours prior to 1991 had a rate of 44 hours a week and before 1984 had a rate of 48 hours a week and they were paid washing allowance at a higher rate but neither of the parties have pleaded this reason in their either reply to the Statement of Claims. Thirdly, as I have pointed out above, that according to witness Shri Cordeiro, examined on behalf of the Employers, the difference in rate of washing allowance depended on the nature of work. But there is hardly any evidence to show the nature of the work between the employees of the Workers' Union, who are paid at a rate of Rs. 120/- per month and those who are paid at the rate of Rs. 80/- per month under the 1994 settlement. In the earlier settlement of the year 1991, these employees were paid at a rate of Rs. 80/- per month for those who were already provided with uniform under the 1991 settlement and those who received uniform under the 1991 settlement and the new entrants joining the service after 1991 settlement were paid Rs. 40/- per month under that settlement. In this connection, I may refer to the Statement (at Exh. 126) which gives the names of all the workmen who are members of the Workers' Union, showing their places of work, hours of work before 1984, hours of work before 1991 and allowances including washing allowance. This Statement shows that there are about 31 employees out of about 150, who are receiving Rs. 120/- per month as washing allowance under the settlement of the year 1994 and were receiving Rs. 80/- per month as washing allowance under the settlement of 1991. All the rest of the workmen were receiving the same allowance at the rate of Rs. 80/- per month under the settlement of 1994 and Rs. 40/- per month under the settlement of 1991. The question is how this difference is explained? In my opinion, the reasons given for this difference are not satisfactory, particularly, when I have pointed out that in the beginning under two settlements, the rate of washing allowance was the same for all the workmen. It is no doubt true, that the workmen working in factory being all together a separate category, would be entitled to receive higher rates of washing allowance. But so far as the other set of workmen is concerned, who are mostly working in administration, why there should be two different rates? One for about 31 employees being Rs. 120/- under the 1994 settlement and the other being Rs. 80/- per month under the 1991 settlement, and the rest of them Rs. 80/- per month under the 1994 settlement and Rs. 40/- per month under the 1991 settlement. In this connection, the oral evidence and the statements themselves show that while making difference in the rate, what the Employer have pointed out is, that those who received uniform before 1991 are paid washing allowance at one rate, while those received uniform under the 1991 settlement and also new entrants, were paid lower rate, that is to say, Rs. 40/- per month. It is no doubt true that on behalf of the Employers, the witness No. 1, has told us that the difference in the rate depends on the nature of work. If that is so, there is no evidence led in this case to say that the nature of work of those about 31 workmen who are paid washing allowance at the rate of Rs. 120/- per month under the 1994 settlement and those who were paid at a rate of Rs. 80/- per month under the 1991 settlement, is different from the nature of work of the remaining workmen who are paid washing allowance at Rs. 80/- per month under the 1994 settlement and were paid at the rate of Rs. 40/- per month under the settlement of 1991. I have already pointed out in the beginning that the rate allowed for the entire body of workmen was the same when the payment of washing allowance was first introduced and was paid at the rate of Rs. 20/- per month and even thereafter when it was increased to Rs. 35/- per month in 1987. Was the nature of work the same for those

two sets of workmen before 1987 and it became different after 1987? That being the posting in view of the pleadings and the nature of evidence adduced in this case, I am inclined to think that the different rates at which washing allowance is being paid to the workmen of the Workers' Union are not justified and therefore, all the workmen of the Workers' Union are entitled to receive washing allowance at the same rate of Rs. 120/- per month, at which washing allowance is paid to about 31 employees of the Workers' Union. They are entitled to receive this washing allowance with effect from 1st January, 1993.

122. Turning to the Soap and Towel Allowance, which is paid at the rate of Rs. 30/- per month, it is necessary to point out that this allowance was introduced for the first time in 1990 on the proposal of the Employees' Union. The demand was that all the employees in "T-Series" should be issued two towels per year and two bathing soap cakes per month. The demand was settled and under the settlement with effect from 1st January, 1991, only employees working in factory, Damsite, Vasco Installation and Projects and Technical Services, except the stenographers, clerk/typists, clerks in the Works Office and Projects and Technical Services, Librarian, Telephone/Telex Operators (shifts) will receive Rs. 30/- per month, as towel and soap allowance (vide Exh. 23, dated 26th March, 1991). At this time, there was no demand from the Workers' Union. Though the demand of the Employees Union was for all employees in 'T-Series', the settlement was entered into between the Employers and the Employees' Union, with respect only to limited number of categories.

Then, in 1993 there was again a demand by the Employees' Union for 'Soap and Towel Allowance' to be paid at the rate of Rs. 200/- per month instead of Rs. 30/- per month. The settlement shows that the parties agreed that the current rate at which Soap and Towel Allowance was paid should remain unaltered.

In this year, for the first time, a demand was made by the Workers Union also, and they demanded "Towel and Soap Allowance" at the rate of Rs. 60/- per month, for all employees. There could be no settlement because the union demanded payment of 'Soap and Towel Allowance' to all the employees of the Company. Since the Management did not agree to this demand, it was agreed to refer to the Arbitrator jointly by the parties. Accordingly, this demand is also included in the present proceedings.

123. Turning to the oral evidence on this point, there is hardly any acceptable evidence to enable me to allow the payment of 'Soap and Towel Allowance' to all the workmen of the Workers' Union.

124. Witness No. 1, examined on behalf of the Workers' Union says in his evidence that this allowance should be paid to all the workmen. In para. 31 at page 33, he admits that the workmen doing technical work are paid 'Towel and Soap Allowance' though earlier he denies that the workmen doing clerical nature of work are not paid 'Towel and Soap Allowance'. He also denies that the workmen in the Technical Division are not provided any 'Soap and Towel Allowance'. At a page 14, para. 1, he says that there are washing room facilities provided to the employees both in the Administrative Building and also in the Factory premises. In each of these two buildings, there are more than one such washing rooms. He further says that at present they are providing liquid soap in each of the washing room, in both the buildings. In addition to these facilities, Technical workmen in the Factory are provided with one cake of soap and one Vim packet each. According to him, this allowance was granted to Personnel Assistants, Stores Assistants, Civil Overseers, Draftsmen, Material Handling Clerks, Excise Clerks/Typists. Then at page 43, in para. 48, he says that the workmen in the factory premises receive "Soap and Towel Allowance" at the rate of Rs. 30/- per month, and those in the Administrative Building do not receive this allowance. In para. 72 at page 63, the witness admits that all technical staff receive this allowance. Similarly, in para. 95 at page 88 also, he says that Technical workmen receive this allowance. In para. 120 at page 95 the witness says that this allowance is paid only to Technical personnel and not to non-technical. All drivers are paid this allowance (para. 178, page 109), but he admits

that Office Attendants (vide para. 142, page 134), Librarian (vide para. 145, page 141), and S & D Assistants (vide para. 147, at page 145) do not receive this allowance. Similarly, Heavy Van Operators are also not paid this allowance. Likewise, this allowance is not paid to one Basil Fernandes also, who is working as Accounts Assistant. In para 168, at pages 163 and 164, the witness says that this allowance is also paid to Estate Assistants. Then we have the evidence of witness No. 2 for Intervener and in para 1, at pages 174 and 175, the witness says that this allowance was introduced under the settlement with the employees' Union. There was no demand from the Workers' Union and according to the witness, the reason was that the employees under the Workers' Union did not need this allowance. The witness further says that the categories of workmen who receive Soap and Towel Allowance, are technicians in Maintenance, Production and Laboratory, Nursing Assistants at the Health Centre, Stores Assistants and Yard Gang in Stores, Drivers at Zuarinagar, Estate Assistants, Draftsmen, Civil Overseers, S & D Assistants at the Railway Siding, Time Keepers located in the Factory and Shovel Operators.

The Learned Counsel, Shri Chander Singh says that this allowance is not paid to -

- (i) Office Attendants in Administrative Building and Regions;
- (ii) Drivers in all regional offices and two drivers in factory, who were recently transferred from regions;
- (iii) S and D Assistants in Administrative Building and Regional Offices;
- (iv) Personnel Assistant in Administrative Building;
- (v) Other Assistants including Accounts Assistants and Purchase Assistants in Administrative Building;
- (vi) Stenos and Clerk-Typists in Administrative Building, Regional Offices and Works Office in Factory;

and

- (vii) Junior Analytical Assistants in Region.

But there is no evidence in these proceedings to show that these workmen referred to by the learned Counsel need this Soap and Towel Allowance. According to the Learned Counsel, this allowance is already paid to these categories viz.

- (1) Stores Assistants in Factory Location;
- (2) Material Handling Assistants in Factory Location;
- (3) Estate Assistants in Factory Location;
- (4) S & D Assistants in Factory Location;
- (5) Personnel Assistants in Factory Location;
- (6) Stock Verifiers in Administrative Building;
- (7) All drivers, except two in Factory Location;
- (8) Draftsmen in Administrative Building and Factory;
- (9) Civil Overseers in Administrative Building;
- (10) Male Nurses in Factory Location;
- (11) Technician Laboratories in Factory; and
- (12) All other Technicians in factory.

If one goes through these categories, it is abundantly clear, that the workmen in these categories need this Soap and Towel Allowance, but in the absence of any evidence to show that those who were not paid Soap and Towel Allowance according to the learned Counsel, they are in need of it. In fact, Rule 91 of the Goa, Daman and Diu Factories Rules, 1985

says that the Rule No. 91 in Chapter V, and titled 'Welfare', provides for washing facility for factory workmen which indicates that this allowance is intended for factory workmen which indicates that this allowance is intended for factory workmen. It is also in evidence of the witness No. 1, examined on behalf of the Employers (vide para. 12 at page 228), that the workmen in Administrative Building, except Civil Overseers, Draftsmen and Stock Verifiers are not paid Soap and Towel Allowance. These workmen are not paid Soap and Towel Allowance, because the nature of their duty does not require them to cleanse themselves up. Then at page 222, para. 5, the witness further says that Soap and Towel Allowance was introduced for the first time in 1991 settlement of the Employees' Union. The provision in that respect in 1991 settlement of Employees' Union (Exh. 23) was that the employees working in the Factory, Damsite, Vasco Installation, Projects and Technical Services, except Stenographers, Clerk-Typists, Clerk in the Works Office and Projects and Technical Services, Librarian, Telephone/Telex Operators (shifts) would receive Rs. 30/- per month, as Towel and Soap allowance. The principle behind giving this allowance was to give the employees who are exposed to factory environment this allowance and deny the same to the employees who are not exposed to this environment, like Stenographers, Clerk-Typists, Librarian and Telephone/Telex operators.

125. In my opinion, therefore, the demand by the Workers' Union for Soap and Towel Allowance, is not justified.

126. Regarding the new Additional Performance Award, the oral evidence on the record would not justify this demand made on behalf of the Workers' Union. In the first place, there is already an Incentive Award based on production, available for the entire body of workmen. The present new Performance Award is provided only to a specified categories of workmen by way of additional incentive. We have on the record (at Exh. 128), the additional Performance Award Scheme which is meant for certain categories only and the scheme shows that it is based on additional performance of certain technical categories only. The evidence adduced by the Workers' Union only shows that they are demanding this additional Performance Award also, but there is no evidence to show that their demand is justifiable, simply because this additional Performance Award is available only to certain technical personnel, it would not be justifiable to allow it to all the workmen. Some of the workmen in the Factory are also excluded. If this additional Performance Award was the first Performance Award, and there was no Performance Award available to the rest of the employees, then that position would have been quite different. In such a case, it would have been possible to allow this additional Performance Award to all the workmen, but in that case it would have ceased to be Additional Performance Award. In the absence of therefore, any justification based on evidence, I do not think that the Workers' Union is entitled to this additional Performance Award. In my opinion, therefore, the demand for this additional Performance Award also deserves to be rejected.

127. The learned Counsel on both the sides have relied upon certain High Courts' and Supreme Court's decisions.

On behalf of the Employers, we have a list of 8 decisions, as follows :-

1. Bharatiya Kamgar Sena
V/s.
M/s. Consolidated Pneumatic Tools Co.
(India) Ltd. and Ors.
(1992 II LLJ page 112).
2. Sher Singh and Ors.
V/s.
Union of India and Ors.
(1995 6 SCC page 515).
3. Premier Tyres Ltd.
V/s.
General Secretary,
Premier Tyres Workers'
Association and Ors.
(1993 LIC page 2511).

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| <p>4. M. V. Srinivasa & Ors.
V/s.
State of Andhra Pradesh and Ors.
(AIR 1997 SCW page 3040).</p> <p>5. Birla Cotton Spg. & Wvg. Mills
V/s.
Its Workmen and Ors.
(1962 I LLJ page 648).</p> <p>6. E.I.D. Parry (India) Ltd. & Ors.
V/s.
State of Tamil Nadu and Ors.
(1985 II LIN page 58).</p> <p>7. M/s. Fabril Gasosa
V/s.
Labour Commissioner & Ors.
(AIR 1997 SCW page 890)</p> <p>8. National Iron & Steel Co. Ltd.
V/s.
Their Workmen and anr.
(1962 II LLJ page 752)</p> | <p>14. 1995 I. C. L. R. 143
Prashant Shamrao Dakhole v/s
State of Maharashtra.</p> <p>15. 1985 I LLJ 459
D. Rajagopalan-v/s Union of India.</p> <p>16. 1984 II L.L.J. 102
T. R. S. Nair v/s State of Gujarat.</p> <p>17. 1983 I LLJ 284
State of Gujarat v/s Ramanlal Keshavlal Soni.</p> <p>18. 1985 Lab. I.C. 1079
K. N. Ananda v/s The Karnataka State Fin. Corpn.</p> <p>19. 1984 II L.L.J. 199
Wilson v/s Registrar Kerala Agr. University.</p> <p>20. (1992) 2 S.C.C. 29
Karnataka Pvt. College Stopgap Lecturers Assn.
v/s State of Karnataka.</p> <p>21. A.I.R. 1960 S. C. 896.
M/s. Burn & Co. v/s Their Employees.</p> <p>22. A.I.R. 1975 S.C. 1114
Hindustan Steel Ltd. v/s Presiding Officer,
Ind. Tribunal.</p> <p>23. 1979 II LLJ 194
Shankar Chakravarthy v/s
Britannia Biscuit Co. Ltd.</p> <p>24. A.I.R. 1970 S.C. 1334
M/s. Parry & Co. Ltd. v/s
P. C. Pal Judge 2nd Ind. Trib.</p> <p>25. Award dated 22nd January, 1979 passed by
Shri R. V. Kollali in Ref. No. IT/37/74.</p> |
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However, none of these is relevant for our purpose in view of the facts and circumstances of this case.

128. On behalf of the Workers' Union also, there is a long list of 25 decisions to which my attention is drawn. They are as follows:-

1. 1982 Lab. I.C. 806.
Randhir Singh v/s Union of India.
2. 1986 - I L.L.J. 79
P. Savita v/s Union of India.
3. 1986 - I.L.L.J. 134
Dhirendra Chamoli v/s State of U.P.
4. (1987) 4, S.C.C. 505
R.D. Gupta v/s Lieut. Governor of Delhi.
5. 1987 Lab. I.C. 500
K. U. Pachgare v/s Visvesvaraya Regional
College of Engineering, Nagpur.
6. 1988 - II C.L.R. 83
Jaipal & Ors. v/s State of Haryana.
7. 1986 - I C.L.R. 124
Surinder Singh v/s Engineer-in-Chief CPWD
8. 1988 Lab. I. C. 543
U.P. Lok Sewa Ayog Karmachari Sangh v/s State of
U.P.
9. 1990 - I C.L.R. 41
U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. v/s
Its Workmen.
10. 1989 Lab. I.C. 189
Y. K. Mehta & Ors. v/s Union of India.
11. 1987 Lab. I.C. 317
Narahari Jena v/s State of Orissa.
12. 1988 C.L.R. page 329
Municipal Corporation of Greater Bombay.
v/s
The Sr. Med. Teachers Assn. Bombay.
13. 1989 Lab. I. C. 1336
Bhagwan Sahai Carpenter v/s Union of India.

129. Most of these decisions are based on the Principle of equal pay for equal work. One of these decisions at Sr. No. 18 may relate to the demand of washing allowance and two of the decisions at Sr. Nos. 21 and 22 will be relevant for the demand of new Performance Award. But considering the facts of this case, I do not think that we can rely on them. They can be easily distinguished on facts.

130. The result therefore is that the Workers' Union is entitled to the Washing Allowance to all their workmen at the rate of Rs. 120/- per month instead of Rs. 80/- per month with effect from 1st January, 1993. The rest of the claims, regarding Factory Allowance, Soap and Towel Allowance and additional Performance Award deserve to be dismissed.

ORDER

1. The Reference is partially accepted, and the demand for increased washing allowance at the rate of Rs. 120/- per month for the workmen who are paid at the rate of Rs. 80/- per month under the 1994 settlement, with effect from 1st January, 1993 is allowed.

2. The claims for Factory Allowance, Towel and Soap Allowance and new Performance Award are rejected.

P. S. Malwankar, Arbitrator.

Mumbai, 13th October, 1997.